** CONFIDENTIAL **

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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IN RE OPTIMAL U.S. : CASE NO.: 10-cv-4095(SAS)

LITIGATION :

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DEPOSITION OF BERNARD L. MADOFF

(Taken by the Plaintiffs)

Butner, North Carolina

August 7, 2012

7:51 a.m.

Reported by: Lisa A. DeGroat, RPR

Notary Public

A P P E A R A N C E S

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DEPOSITION OF BERNARD L. MADOFF, taken by the Plaintiffs, at the Federal Correctional Institution - Butner Medium I, Old N.C. Highway 75, Butner, North Carolina, on the 7th day of August, 2012, at 7:51 a.m., before Lisa A. DeGroat, Registered Professional Reporter and Notary Public of the State of North Carolina.

C O N T E N T S

I N D E X O F T H E E X H I B I T

S T I P U L A T I O N S

Before testimony was taken, it was stipulated by and between counsel representing the respective parties as follows:

1. That any defect in the notice of the taking of this deposition, either as to time or place, or otherwise as required by statute is expressly waived, and this deposition shall have the same effect as if formal notice in all respects as required by statute had been given and served upon the counsel in the manner prescribed by law.

2. That this deposition shall be taken for the purpose of discovery or for use as evidence in the above-entitled action, or for both purposes.

3. That this deposition is deemed opened and all formalities and requirements with respect to the opening of the same, expressly including notice of the opening of this deposition, are hereby waived, and this deposition shall have the same effect as if all formalities in respect to the opening of the same had been complied with in detail.

4. That the undersigned, Lisa A. DeGroat, Registered Professional Reporter and Notary Public, is duly qualified and constituted to take this deposition.

5. Objections to questions, except as to the form thereof, and motions to strike answers need not be made during the taking of this deposition, but before any judge or any court of competent jurisdiction for the purpose of ruling thereon, or at any other hearing or trial of said case at which said deposition might be used, except that an objection as to the form of a question must be made at the time such a question is asked or objection is waived as to the form of the question.

6. That the signature of the witness to the deposition is hereby reserved.

7. That the Federal Rules of Civil Procedure shall control concerning the use of the deposition in court.

P R O C E E D I N G S

Whereupon,
BERNARD L. MADOFF,
having been duly sworn,
was examined and testified as follows:
DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS
BY MR. BLEICHMAR:
Q. All right. Good morning, Mr. Madoff.
Could you, please, state your name for the record?
A. Bernard Madoff.
MR. BLEICHMAR: And, because there's been no introductions by the usual videographer, I will lay out on the record, my name is Javier Bleichmar. With me is Alan Ellman, from Labaton Sucharow.
We represent the plaintiffs in the -- in re: Optimal Securities litigation in the United States Federal District Court, in the Southern District of Manhattan.
And, Mr. Regan, if you'd like to introduce --
MR. REGAN: Sure.
MR. BLEICHMAR: -- counsel for the defendants.

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MR. REGAN: Shawn Regan, Hunton & Williams. We represent the defendants in this lawsuit. With me is Gus Membiela, also from Hunton & Williams. Gus is in our Miami office. I'm in our New York office. And I think that's it.

Before we go any further, I should just say, we want to designate the transcript as confidential, subject to review. Designated as confidential in its entirety at this point, subject to further review.

MR. BLEICHMAR: Right. I mean, we obviously object to the designation, but the procedures are set --

MR. REGAN: Right.

MR. BLEICHMAR: -- in the protective order.

MR. REGAN: Right.

BY MR. BLEICHMAR:

Q. Mr. Madoff, have you been deposed before?

A. Yes.

Q. And when were you deposed approximately?

A. Oh, years ago.

Q. Were you deposed as a -- as a party to a lawsuit or --

A. No. As a witness.

Q. You were a third-party witness?

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A. Expert witness. Right.

Q. An expert witness?

A. Yeah.

Q. And was this a civil litigation?

A. Yes.

Q. And what capacity of expert witness were you?

A. Trader. As an expert trader.

Q. So you're a little bit familiar with -- with the mechanics of a deposition; correct?

A. Yes.

Q. I'm going to ask you to make sure that all of your responses are verbal. Otherwise, the court reporter cannot transcribe them.

Also, please make sure you let me finish my question before you begin your answer. That way the court reporter doesn't have to step on itself.

Do you understand?

A. Yeah.

Q. If you -- if you need a break, please, let us know.

A. Uh-huh.

Q. We can take a break whenever it's convenient for you.

At some point in time defense counsel may

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object to my questions. They're preserving their objections. You may still answer the questions, but we need to provide defense counsel an opportunity to object.

One last thing. You're not represented by counsel here; correct?

A. No.

Q. And you understand that I am not your counsel; correct?

A. Correct.

Q. Let me ask you first a few background questions about your -- your business.

A. Uh-huh.

Q. Your former business was called Bernard L. Madoff Investment Securities; correct?

A. That's right.

Q. And can you describe generally what -- and, actually, let me step back.

Can we refer to that as BMIS for short?

A. Yeah.

Q. And can you describe briefly what BMIS did?

A. Well, we originally started out as a market making firm and a proprietary trading firm in 1960. And there was a small division that was a money management firm that was headed

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up by myself, my sons and my brother, ran the market making and proprietary side of the business.

We then became a registered investment advisor in 2006, and that business was basically separate from the market making proprietary business. Although, it was under the same heading and under the same umbrella.

Q. When you referred to the market making business, for purposes of the jury, that is not familiar with these trading terms, can you just describe what market making entails?

A. Market making is basically a wholesale operation that is similar to a specialist operation on the floor of an exchange.

We actually were the largest competitor of the New York Stock Exchange, and we transacted about 400,000 transactions a day. We represented close to ten percent of all of the trading in U.S. equities.

What a market maker does is stand -- is registered with the SEC and the NASD, now called FINRA, as a market maker. He then is responsible for maintaining an orderly liquid market in a list of securities that he registers

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for.

We traded the complete 500 S&P securities, as well as about 200 NASDAQ securities as well. We carried an inventory, which at times could be as much as a billion dollars.

And our clients are primarily all of the discount firms, like Schwab and Fidelity, and the retail brokerage firms, anywhere from Merrill Lynch to Goldman Sachs and so on.

Q. When you say you were registered with the SEC, is that registration as a broker-dealer?

A. A broker-dealer. Correct.

Q. So is the market -- when you're referring to the market making business, is that effectively what's also known as the broker-dealer side of the business?

A. Yes.

Q. And what types of clients did BMIS have in the broker-dealer side of the business?

A. We had a few hundred -- about maybe 300 other broker-dealers. As I said, from -- anywhere from Fidelity and Schwab and regional firms, like A.G. Edwards, to full-service firms, like Morgan Stanley, Goldman Sachs and Merrill

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Lynch.

We also had a number of retail clients. Some of them were very large investors, but you would classify it as institutional-type investors. Although, they were individuals or wealthy families.

And then we also had -- we started out investing for basically family and friends, doing a bona fide arbitrage strategy, which is a strategy of trading convertible securities in an arbitrage fashion.

We never did -- well, we primarily did not do any retail business, in the sense of if a client wanted to buy General Motors or IBM, then we would not handle that transaction.

We did handle transactions for some of these large investors outside of arbitrage, which were primarily hedge type of transactions in high capital vision and securities.

Q. When you refer to investing for families and friends, is that what has been referred to as the investment advisory side of the business?

A. No. You have to understand that the brokerage industry is basically -- has always had an issue with registering as investment

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advisors, as opposed to just a broker-dealer.

The main reason that was was because investment -- once you register as an investment advisor, you're subject to the fraud statutes. So all brokerage firms, without exception, you know, only register as an investment advisor if deemed to be necessary based upon the regulations which require you to register if you do a certain kind of business.

When that happens, most firms will choose to build another entity where they will maintain the investment advisement business under that umbrella of the investment advisor, which is separate from the broker-dealer.

There is an exemption for broker-dealers to not register as an investment advisor, which was the exemption that we followed, which is an exemption that says as long as you did not have what they deem special compensation, in other words, you weren't charging a fee, other than a commission, which was incidental to the transaction, then you -- and you weren't doing a discretionary account, and that discretion was exempt.

The definition of discretion was where

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you -- you could have discretion for a time in place of execution, but you couldn't choose the security. If you followed those rules, then you fell under the exemption of a -- of not having to register as an investment advisor.

And we chose that exemption for 50 years or 40 some odd years. Then in the -- starting in the 2000's the SEC, because of the growth of hedge funds and the problems that were developing, wanted firms to register as investment advisors.

That was met with a huge amount of opposition from the industry, which I was part of, because I was at that time on various committees and boards in the industry.

And the fight went on for a number of years. Primarily because of the reason that I stated, about firms not wanting to have to register as an investment advisor, which included even hedge funds, who had no registration, even as broker dealers.

The -- there was an issue in -- that started, I guess, in maybe 2004 or '05, where the SEC went to some of our clients, and we were executing trades for hedge funds, large hedge

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funds. And because those firms were deeming us to be an advisor on their offering documents, the SEC chose to take the position that they felt that we should register.

We objected to registering at that time, and we employed the firm of Wilmer Cutler, who was by far supposed to be the expert in securities litigation at that time.

And I had known partners in the firm, primarily Brandon Becker, through my work with the SEC and the NASD, who was the past head of market regulation.

And we -- we got into negotiations with the SEC as to whether we should register or not. It was Wilmer Cutler's position that we did not have to register because of the type of business we were doing and the exemptions that existed.

The SEC, you know, objected to that. They felt that -- that we were using discretion with a number of -- of clients, including the hedge funds.

The -- Wilmer Cutler said, no, we weren't, because of the documents that we required all of our clients, both small and large, to sign that basically stated that we are

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not authorized discretion on their accounts, other than time and place, which was allowed, and that we used the same model type of transaction for all of our clients, large or small, except a handful of large clients, which we did not have discretion for. And we used to get the instructions from those individual clients. Anyhow --

Q. So you registered as an investment advisor --

A. Well, we --

Q. -- in 2006?

A. We -- right. In 2006 there was a conference call for probably two -- two or three hours between the SEC, Wilmer Cutler and myself, where they argued this issue.

The conference call ended basically with nothing being resolved, other than the fact that we were not going to register.

The -- I then decided in December of 2006, based upon rumblings from the SEC about they were going to force everybody to register anyhow, to register as an investment advisor.

We, in fact, did register as an investment advisor in 2006, filled out the

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forms, with the assistance of Wilmer Cutler and their investment management people.

And took the position that we only had a certain number of discretionary accounts, which we put on the forms. And the other accounts were nondiscretionary accounts.

Some of the forms -- some of the funds, because of documents that they had filed and wouldn't change, we considered them to be investment advisory clients. Others we did not.

The SEC then -- they lost in court a case against the hedge funds that required -- and that said you did not have to register.

At that time Wilmer Cutler called me up and said, you can give up your registration, if you so choose, because it's clear now the courts have decided they're -- you're not required to register.

At that point we said, look, we've already gone through the effort. This is going to be an ongoing battle with the SEC. We're going to keep the registration.

And all of our investment advisory business, with the funds and those clients that were -- were done -- actually, at that stage

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everything was pretty much done through the investment advisory side.

Q. At the beginning you mentioned that BMIS had essentially three aspects to its business, market making, proprietary trading and money management; right?

A. Correct.

Q. And this aspect of the registration as an investment advisor is the aspect that refers to the money management business; is that right?

A. Yes.

Q. Could you describe briefly just the proprietary trading part of the business?

A. Proprietary trading is similar to the market making business, except they're -- it's -- it's where you're trading solely for your own account as principal. You're not trading as agent for your other clients.

So primarily your firm allocates a certain amount of capital, which is deemed to be risk capital, where you maintain an inventory for either long-term or short-term.

And was -- was typical in our firm, that inventory was always hedged using various derivative products, like options and futures

and convertibles to -- to limit the risk.
Q. And was that generally a profitable business?
A. Yes. It was a very profitable business, as was the market making business, but regulations required you to have -- to wall off and have what's in the industry known as Chinese walls between the different divisions of the business.
So we had separation basically between three businesses. We had the market making business, which was run by one of my sons, Mark Madoff. And there was a proprietary business, which was run by my son, Andy Madoff.
My brother basically was the compliance officer on both of those -- of those firms.
The money management side, the investment advisory business was run by me. I was also the compliance officer of that, of the money management or the investment advisory business.
They used different computer systems. There was -- we had different managers. The rules were -- that we followed were based upon an SEC no action letter that basically said you

had to have separate managers, separate P&Ls for the divisions.
There could be no communications between the managers or the individuals in those divisions. So they operated basically as three separate firms. They could operate under the same trading room.
Also, that was basically a no action letter, because before that time the industry had sort of absurd types of arrangements where they would have a locked room in the middle of the trading room, and that was deemed to be -- basically First Boston filed for a no action letter that said this is insane, to have that type of a system.
So that was when the SEC said, okay. Fine. As long as you have separate management and P&L, you can all have it under -- under one roof.
Q. And the market making and proprietary trading business were clearly part of the broker-dealer business; correct?
A. Yes.
Q. And was there a specific type of registration that the broker-dealer had?

A. Yeah. It was just a broker-dealer registration. It was, you know, with -- that everybody had to have to register.
Q. And was it allowed to hold certain specific securities or any types of securities?
A. Any types of securities.
Q. So was BMIS allowed to hold treasuries?
A. Yes.
Q. Who did the broker-dealer settle and clear through?
A. We cleared ourselves.
Q. So it was -- it was self-clearing?
A. It was a self-clearing firm from -- from inception.
Q. And what does that mean, that it was self-clearing?
A. In other words, we had a back office operation that was capable of receiving and delivering securities, you know, through -- with your own bank accounts.
You didn't have what they called an omnibus or a clearing arrangement with another firm, like a Bear Stearns or Merrill Lynch, who actually cleared the firms, and you just executed -- the trades, and you just executed

them.
We had some clearing arrangements with a London operation through Barclays Bank in London. That was a separate entity, a separate broker-dealer, registered with the FSA in London, and was a member of the London Stock Exchange.
And that was formed in 19 -- I think it was '83 or '84. That had its own capital.
Q. When you -- when you first started the firm, I think you said, approximately 1960?
A. That's correct.
Q. That was clearly before the advent of all of this technological advancement; right?
A. That is correct.
Q. Could you describe for me mechanically how the clearing process worked when the securities were actually physical?
A. They were done -- securities were handled by messengers. In other words, if you bought 100 shares of IBM from Merrill Lynch, it was a seven-day settlement.
Seven days after you purchased the transaction -- well, immediately you would send out a confirmation, which is, you know, a

document that basically mirrors what the trade was, the monies involved.

On settlement day, which was seven days originally, Merrill Lynch would deliver the securities over what's called a window to your back office operation.

And you would pay for those securities either with a certified check or a regular check from the bank, or they might take it to be certified and so on.

Q. You would hold physically the securities?

A. You would physically hold the securities in -- in your vaults, bank vaults or your own vault, depending upon what your -- what your capability was.

Q. And if you weren't a self-clearing organization, did that mean that that exchange of the security and the cash occurred somewhere else?

A. Yes. You would -- you had a -- normally you'd have a clearing arrangement with a clearing firm, like a Bear Stearns or a Merrill Lynch, who would act as your back office.

The securities from -- that you had bought from Merrill Lynch would be delivered to the clearing firm of -- for your account.

You would have money on deposit with that clearing firm, and the transaction would be handled completely by them. And they would typically hold the securities in safekeeping for -- for you.

Q. Was it customary for firms like BMIS in the early days, in the 1960s and '70s, to be self-clearing firms?

A. Yeah, yeah. It was -- the business was very, very different. It was much, much smaller scale. It was a time that there were many, many boutique -- what you would now call boutique type of firms.

We were unique when we registered, because we registered with less than $500 worth of capital, which was something that the SEC had never seen to that point. The --

I was in law school at the time, was primarily doing business with a handful of family and friends. It was not uncommon to have small firms like that, but, as I say, $500 probably stretched the imagination, to the point that the SEC required me to have an audience with them to make sure that I was for real, which I did. And they couldn't object to it.

And at that time, you know, as I say, you were doing a few trades a day. So it was not that difficult, but most -- there were many, many firms that had capital in the thousands of dollars.

To give you an example, as recently as the '50s Morgan Stanley's total capital was 15 million dollars, which more people are shocked to hear that today. So it was just a totally different -- a different business.

Q. So once technology became more prevalent in the financial world, how did the clearing mechanism change?

A. Well, I guess you could blame me for that partly, because -- which I get blamed for everything it seems.

Sometime in the '70s there was a paperwork crisis, where knowing -- the volumes of business grew, and no one knew -- no one knew -- no one knew what was happening in the industry. People working 24 hours a day to try and sell their trades.

And there were five of us that came up with the concept of having a centralized clearing organization. That was a very

controversial position.

Q. Which -- who were the five, out of curiosity?

A. Bennett, who was from A.G. Edwards & Sons. I think it was Charlie Allen, from Allen & Company. I think Oppenheimer was involved.

And I don't recall the others any longer. My brain is somewhat fried with everything that's happened here.

So -- but at that time the -- the clearing -- the industry was basically handled by either large brokerage firms, like Bear -- like a Bear Stearns or Merrill Lynch, or large banks, like Chemical Bank, you know.

Most of those banks have now been merged into other ones, but -- Manufacturers Hanover. And also cleared for brokerage firms.

So they saw a centralized clearing and depository organization as a big threat to their business, which it was.

Well, we -- we, you know, struggled through a period of time where the SEC realized that this -- the industry had to change, in spite of the objections by the turf wars that were going on between the banks.

And we formed a clearing organization called National Securities Clearing Corporation. And the idea of that -- that business was to basically act as a central clearing organization for firms, so that if we bought stock from Merrill Lynch, Merrill Lynch would deliver those securities to the clearing corporation.

The clearing corporation that same day would bill us for the transaction. We would have on deposit certain monies that they would hold in escrow for us to assure that we were -- you know, in a crisis mode we're able to sell the trades.

But the trades basically still at the end -- on the settlement day, on seven days, we -- the clearing corporation would let us know, okay. You have net settlements, net buys of X number of dollars. And we would -- we would pay them by wiring money in to settle the transactions.

And pretty much, with the SEC's prodding, everybody joined the clearing corporation, providing it had enough capital to -- to apply as a member. The --

Then that morphed into the Depository Trust Company, which now it's one organization. You know, referred to as DTC, where the -- everything is done through -- through one organization.

I served as -- as chairman of the clearing corporation from 19 -- I guess it was '83 or '4 through 1987. I -- and was on the board of the clearing corporation.

My brother was a board member of the Depository Trust Company.

The -- and those -- that organization cleared primarily equities. It then grew -- it eventually cleared government bonds and -- and other bonds and also international securities.

I was chairman of the International Clearing Corporation, which is part of that organization as well. And that basically, you know, allowed the industry to grow to the level that it grew until presently, because it was a seamless type of a transaction.

And to where it is now, settlement really basically happens in one day, rather than seven days. Although, it's still a three-day settlement, but you have to sort of match the

trades within one day.

And when you buy securities now, I may buy from Merrill Lynch, and I may sell to someone else. At the end of the day you never even know who you bought and sold the securities from, because the clearing corporation is on the -- is on the -- is the counterparty to the transaction.

Q. And the clearing corporation today in this instance was DTC?

A. Yes.

Q. So what is the difference between clearing through DTC and having self-custody?

A. Well, there virtually is very little self-custody anymore in the industry today, because of the fact that all of the business is done through the clearing corporation.

So the clearing corporation holds those securities as a custodian for its -- for its members.

The only time you would hold custody in securities in your own vault would be if, in fact, it was an instrument that was not handled by DTC.

Government bonds were -- treasury bonds

were handled.

Primarily it was -- it could have been -- it could be held as just custody at DTC as well, or a lot of firms held it with a custodian bank that was a primary dealer in securities.

We had billions of dollars worth of treasuries in custody at Morgan Stanley, JPMorgan, Bank of New York, Bear Stearns. We typically, you know, up until pretty much the end of my firm --

Q. Is this on the market making business side?

A. No. In the -- in the investment advisory firm.

We typically had, you know, upwards of four billion dollars worth of treasury bills in -- in custody at those firms. Where -- all of our equities were held at DTC.

Q. So let's -- let me take a step back and discuss the money management, slash, investment advisory side of the business.

So who are -- who are your investors generally in that side of the business?

A. The investment -- the management?

Q. Yes.

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A. Well, primarily hedge funds and banks. The lines were blurred between the hedge funds and the banks, because a lot of the hedge funds cleared and settled through banks or owned by banks and so on. So -- but primarily the bulk of the business was hedge funds and -- and banks.
Q. So, if I understand this correctly, the hedge funds and the banks would provide you with funds to invest on their behalf?
MR. REGAN: Objection.
THE WITNESS: Yes.
MR. REGAN: You can answer.
THE WITNESS: Yes.
BY MR. BLEICHMAR:
Q. And -- and how did you invest that money?
A. Well, we -- let's talk pre --
Q. Let me take it back.
How did -- what did you tell these investors of how you invested that money?
MR. REGAN: Objection.
You can answer.
THE WITNESS: Okay. Well, the investment strategy that we used for all of the hedge funds, which were in banks, which are the same,

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as well as individual clients that we had, was basically a form of option arbitrage, where we developed a model where we bought originally 15 securities. That then grew into 50 securities in the S&P 500.
And we hedged those transactions using S&P 100 index options, which had a correlation to that -- to those securities.
That was -- that started in the -- in the '80s. And that was a -- a business that we did for everyone, including hedge funds and so on.
BY MR. BLEICHMAR:
Q. And is that --
A. A hedge --
Q. Is that business generally referred to as -- or that strategy referred to as the split-strike conversion strategy?
A. Yes. Right.
Q. I didn't mean to interrupt. Go ahead.
A. No. The -- the hedge fund money basically came in in the '90s. And up until the '90s the business was -- that I was doing for the -- for everybody in the investment advisory or investment management side, even though I wasn't registered as an investment advisor, but

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let's say that it was all basically deemed to be investment management, handled by myself, was a completely legitimate business, where we actually were going out and purchasing securities involved and holding the securities. And those were completely legitimate transactions.
In the late '80s I got myself into a bit of difficulty with a number of large investors, primarily four investors that had been investors of mine for many, many years, who were doing a form of hedging with me to -- basically the goal was to obtain long-term gains on security positions that they held.
At the -- during the crash of '87 -- and let me just back up.
The -- those -- those transactions involved buying a portfolio of securities and then hedging them with options, but not with a model, as I was doing with the others. It's a distinct situation.
The idea would be you would hold those -- they would hold those securities for at that time a one-year period, which was the holding period for long-term gains, and they

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would hedge those securities by selling -- doing what's known as covered rights options or buy inputs against those securities.
At that same time, starting in 1980, I was doing a large arbitrage business in convertible securities with European banks, primarily a bank called Banque Privee, de Gestion Francais, which is a Paris bank, private investment bank, which -- who was introduced to me by a Swiss banker that I knew.
And primarily there was a French client by the name of Albert Igoin, I-g-o-i-n, who was an ex-banker, who was primarily a private investor.
And they were -- they had approached me in 1980 to do convertible security arbitrage for them, which was the buying of convertible securities and selling simultaneously the equity side of the business, which was something that we had done for many, many years and had developed a business that was --
We were one of the largest convertible securities on Wall Street. Traded convertible securities as a market maker.
This -- this business went on from 1980

into the '90s, and simultaneous to me doing that business.

And they -- that -- that bank was also the counterparty on the equity sides of the business that I was doing for the four large investors.

It's relevant -- and hopefully it'll become a little bit clearer a little bit as I get into the story. The -- so -- and it was a good fit for everybody.

There was also a -- I was approached at -- at the same time by this bank and some other French banks that were interested in utilizing a strategy to hedge their positions in the French franc.

In those days French citizens could not hedge currencies. There were currency controls in -- that existed in 1980, when Mitterrand came into France. Things were in a turmoil. He started nationalizing the bank. He nationalized Rothchild and some other banks.

And everybody was worried about them becoming -- going communist. So there was a tremendous move to try and hedge the currency, but you couldn't do that.

If you were a French citizen, you weren't even allowed to take francs out of the country. When a French citizen traveled, they could only take enough money to basically not even buy hotel rooms.

So they needed friends to give them money to pay for these things. It was, you know, absurd, but that's the way it was.

Anyhow, the banks approached me with a strategy that allowed them to hedge the currency -- the French currency by the following procedure.

They were allowed to sell French francs and buy dollars, providing the dollars that they were purchasing were used to pay for U.S. equities, which, obviously, was a requirement.

If you -- if we bought stock for a client, we didn't want to be paid in francs. We wanted to be paid in dollars. So they would -- they would take their French francs and sell them.

And if they needed a million dollars, they would sell a million of those French francs. The bank would convert it to a million dollars in -- in dollars.

They would buy -- they would take those million dollars and pay for the million dollars worth of securities we had. In this way they owned dollars.

Now, of course, that put them at risk of the U.S. equity market. So they approached me with -- because we were known as a big hedging firm at that time, they said, can you hedge our market risks?

We don't -- we're not looking to make any money in the market, quite frankly. We won't object to it, but we primarily are willing to -- to make our money from the currency, from being long dollars and out of francs, as long as we didn't lose money in the equity side.

So I went about -- and this transaction was simple -- according to them was -- was prior to this handled by Goldman Sachs and other large firms, but they were charging them large -- large fees to do this.

At that stage our reputation was a low cost execution provider, because of the technology that we already developed, and because of the large amounts of order flow we had.

So we negotiated with them that we would do the hedging transaction, handle the whole thing for them at a lower -- lower rate than they were charged.

This made a natural fit for these large clients that I was trading for, who were interested in buying a large portfolio of U.S. equities.

So I was able to, you know, cross the transactions in the U.S. equities with the equities that the bank was doing, hedge their transaction with options and so on.

Okay. I don't know if you're all following this, because the SEC had a great deal of difficulty --

Q. And at that point --

A. -- with this.

Q. Let me -- let me try to break that up a little bit in pieces.

A. Okay.

Q. So, in other words, the French banks send you French francs to purchase equities --

A. No.

Q. -- correct?

A. That's done by the -- they --

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Q. They sent you dollars?
A. They sent me dollars.
Q. You purchased equities for them; correct?
A. Correct.
Q. And you hedged it using options to minimize the market risk; correct?
A. Right.
And those equities were held at -- at either DTC or, you know, other places.
Q. Did -- did you provide the banks with statements of their equity positions?
A. Yes. They were no different than any other client of mine. We sent out confirmations and monthly statements.
Q. So they received monthly statements on BMIS letterhead?
A. Correct.
Q. And at one point you said that this for awhile was a legitimate business; correct?
A. Correct.
Q. And then you said you got a little into trouble?
A. Right.
Q. How did you get into trouble?
A. Okay. When the market crashed in '80 --

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well, part of the arrangement that I had with these four clients was that their securities --
Q. Which four clients?
A. Jeffry Picower, Carl Shapiro and his family. Picower had also a number of -- of accounts, you know, large accounts.
Norman Levy, who was a large real estate investor. Stanley Chase, who was a California hedge fund -- it was really a limited partnership. He never registered as a hedge fund.
Those are the four clients. There were a few others. The --
Q. You mentioned a Swiss guy?
A. Yeah -- no. Oh, that was -- he just made the introductions, Albert Igoin.
Q. I understand.
A. He was in the pipeline.
Q. I understand.
A. The arrangement was that they would buy this portfolio of securities, and then we would sell options against it.
Now, the -- understand that these options were primarily over-the-counter options.
Q. How is this related to the French banks?

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A. Because they were the counterparties on the options, hedged their portfolios.
Q. Picower or Shapiro, who you --
A. So you basically had Picower or Shapiro -- you had Picower and Shapiro, who purchased the options. The options were sold by the French banks -- you know, the French bank, I should say.
And the understanding was that these options were going -- they were long-term in nature, commonly referred to as leaps. But the understanding was that these options were to be held for at least a year. And that was primarily because the equities had to be held for a year from the large clients.
The banks needed to have their positions hedged as well. So it was an understanding between the parties that these transactions were long-term in nature.
The -- now, in those days over-the-counter options were basically endorsed by the broker putting them together, which meant that he was standing behind the options.
Q. So you were standing behind the options?
A. Yeah. I mean, if they defaulted. As

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opposed to now, the clearing corporation options -- the clearing corporation now handles those transactions.
But all of the derivative products that you see that got the industry -- the country into trouble, all of these CDOs and CDSs and so on, those are also over-the-counter options.
So a very, very small percentage of option business, both equity options and all of these derivatives, are actually done on exchanges.
They are primarily all done over the counter, where the various counterparties keep changing and so on and so forth. And it's a whole myriad of cyberspace type of situations.
Q. So let me try to break this down, see if I understand it.
The French bank or banks sent you dollars and purchased equities; correct?
A. Correct.
Q. And then also entered into option transactions to hedge their market exposure?
A. Right.
Q. And the French banks were on one side of the option transaction, and Mr. Shapiro, Mr. Levy,

Stanley Chase and Picower were on the other side?
A. Yes, but --
Q. And you were in the middle?
A. But I was in the middle, as -- because those transactions were basically handled as principal transactions, which is typically the way the market makers trade.
Q. So when did -- where did it go wrong?
A. Okay. When the market crashed in '87, these four clients, primarily Picower and Shapiro, were concerned that the market was going to continue to go into a free-fall, and they were going to lose the advantage of their long-term gains that they had been holding.
Now, of course, from 1980 until 1987 the market -- when I -- when -- I devised the strategy for them in 1980. The strategy was dependent upon the market going up, because you can't get long-term gains unless the market goes up.
Prior to this they were using Silver Straddles and all of these different types of Mickey Mouse type of hedging strategies, tax shelters, which the government was disallowing anyhow.

So I went to them at that time, and I said, look, the only way you're going to get long -- you're going to -- you really get sheltered income is by trying to develop long-term gains in the equity market.
Their concern was, well, that means the market going up. And I said, look, well, that's for sure. I said, I can't guarantee that, but at that time I felt strongly about the market, because it just looked to me to be bottoming out.
And I said, you know, you have nothing to lose by trying it. So they gave me the go ahead, and we developed this.
Well, by the time 1987 came we had huge -- billions of dollars worth of long-term gains.
Q. And by, "we," who are you referring to?
A. Meaning the clients, you know. All I was making was the commissions and markups on the transactions. I was not a party to the transactions.
Q. And, "the clients," meaning Mr. Shapiro and Picower?
A. Shapiro, Picower and Chase. The -- so

they, as typical retail clients, even though they were wealthy retail clients, would do is they decided that they did not want to lose these gains, which they always objected to selling over the years, even though their -- their holding period was -- was long past, but they were --
Not only now did they want the long-term gains, they wanted to defer paying the taxes on the long-term gains as well, which is, you know, the -- not that hard to understand, if you knew -- if you did a client business.
So this led to them basically saying, well, look, we've got to sell, because you can't guarantee the market is going to go down.
I said, well, that's true. Now, you're hedging. You're not going to lose anything, but you will lose the long-term gain aspect of it.
At that time also there was rumblings from the IRS about shelter -- about Straddle -- Silver Straddles and long-term gains and hedging and all of this stuff that was going on.
So they basically --
Q. When you say there was rumors from the IRS that they would disallow the --

A. That they --
Q. -- ability not --
A. -- were changing the rules -- the Straddle rules on hedges, that basically said that, if, in fact, you are long one security and short a similar security, which was part of the strategy, they were going to disallow that, because there was no risk involved in that. So --
Q. They were going to disallow the ability not to --
A. The long-term gain.
Q. The long-term gain. Correct.
A. Right.
The -- I was put in an awkward position, because I was being pressured by these clients to sell their long equity positions, take their profits.
And they then said, but they -- I said, well, look, it's a problem for me, because I can't -- if I sell the equities, then I'm open -- you're open on the -- on the hedge side of the transaction, and you're at risk.
Well, they said, well, the market is going to go down anyhow. So, therefore, they --

the money that they would -- they were short, the hedges they were short, were going to be a profit as well.

I said, well, that's not -- that's not a guarantee.

So the -- there was a -- there was a -- a lot of negotiation between me and the four clients, because I felt obligations to the French clients, who were on the other side of the hedges. And --

Q. And who were the French clients?

A. Banque Privee.

Q. Banque Privee.

A. And Albert Igoin.

And I said, look, this has, you know, put me in an awkward position. The understanding, which we all agreed to, was that these trades were going to be held for -- you know, until they were ready to unwind the transaction on their side.

So I foolishly decided that I would step in, and I would take their position on the short side of the option, which meant that basically I was now at risk for the -- for the market, you know, going up, because I was now short the

options that they were short and the -- and I didn't have the equities to cover that, which -- because they had sold -- I had sold that for them.

So I said, look, I can't do this, because I think the market is going to go up eventually, and this is going to be a disaster.

So they said, okay. Look, we'll hold you harmless for the option loss, because we think the market is going to go down.

So I said, well, how are you going to do that?

So they said, well, we'll -- we will change our trust in -- you have to understand, these people are like family to me. So it was -- it was a -- a very close relationship. It wasn't just a business relationship.

Q. In what way were they like family?

A. Well, they were sort of like -- Shapiro was sort of like a father figure to me. So was Norman Levy.

Picower, who really was my age, was not, but I was the executor of his estate and all of this -- those things.

And I was basically the one responsible

for all of them becoming billionaires. And we were -- you know, our families were close.

So they said to me, look, we will change our trust agreements and our wills, so that you will be held harmless.

Meaning now they couldn't -- they said, look, you are in charge of investing for us forever. And even after we die -- because by now Picower -- not Picower, but Shapiro was, you know, in his late 80s. Levy was the same.

I said, look, you know, I don't want to have to deal with your children, you know, you know, on a -- to say basically, your father told me so.

So their lawyers put together -- they changed their trust agreements, that basically said that I was the only one that could invest. I was not liable for any risk involved in this.

As a matter of fact, Levy's bank was the trustee of his -- and the bank said, look, you know, we want to be the -- we want to be the executor. We want to be responsible for investing, not Madoff.

And he said, no, no. So he -- I then became the executor of his estate and all of his

children's trusts and so on and so forth.

And the -- there were other arrangements made between their foundations and me, where I would invest money for their foundation accounts, which I was investing. And --

Q. So what -- so what went wrong?

A. Well, the market, as I had feared, went up. I theoretically was covered by them, even though it was sort of a bizarre arrangement, to be -- to be quite honest with -- but --

And that was a major, major blunder on my part, which is still hard for me to understand. And hard for my -- probably wife to understand and my sons.

Although, quite frankly, they weren't even aware of this. My sons are still not aware of it. My wife just became aware of it, you know, recently.

The -- I just foolishly did this, because I didn't want to ruin the relationship with the -- with the banks.

I never thought the market would run the way it did. You know, I thought it would recover, but not at the levels that it did.

And, unfortunately, Jeffry Picower, who

was a large investor with Goldman Sachs, started to tell me that he was losing money at Goldman Sachs, which I certainly knew was likely, because he was a real, you know, speculator, to begin with.

He was a leverage type of a player. He had invested -- he was one of Ivan Boesky's original investors and -- and sort of got burnt with Ivan Boesky.

He was an investor in long-term capital at Goldman, that Goldman arranged for him, which was the hedge fund that went bust in '98.

Q. So Picower lost money?

A. Yeah. And he lost a huge amount of money, he told me, in the bond market in the '90s with Goldman. They had a real fiasco for their clients.

And I said to him, what's -- what's going to happen? I said, you know, you were the -- you're getting wiped out.

And he was the one that made more money than anybody else with me. More than -- you know, Shapiro had maybe made like a billion dollars, and Picower had made billions of dollars.

So he assured me, don't worry. Goldman is going to take care of me. I am -- you know, they're going to give me special treatment. I will deal with -- you know, they're going to give me all of their deals.

And Goldman -- I was friendly with partners at Goldman. So I knew that they had the capability of doing that. As a little thing, news event, was uncovered, you know, I guess a few years ago between Goldman and Gaddafi's family in a similar situation, where Goldman had lost a lot of money on a hedge transaction for them, and then promised Gaddafi that they would structure some special deals for them, which somehow --

You know, nothing really came of this whole thing. They were threatening lawsuits, but at that time Gaddafi was -- had bigger problems to worry about than Goldman Sachs.

Q. So Picower lost money with Goldman?

A. Picower lost money, or at least he let me believe that.

Q. Uh-huh.

A. And I had no reason to not.

MR. REGAN: When convenient, could we take a quick restroom break?

MR. BLEICHMAR: Sure. We'll finish this line of questioning, and we'll take a break in five minutes.

MR. REGAN: Sure.

THE WITNESS: I'm almost finished with this.

MR. REGAN: No. That's fine.

THE WITNESS: So the -- I started to get nervous, and this started in the -- this basically came to a head in the -- in the '90s.

And at that time I was being pressed by a number of hedge funds to invest money in this model developed -- the model site trading, split-strike conversion, that we were dealing with.

And I looked at -- I said to myself, look, if I'm never going -- if I'm -- I'm going to -- I'm now in a hole, because I was now out, you know, a couple of billion dollars from --

BY MR. BLEICHMAR:

Q. From Picower?

A. -- from Picower and these other people. And the only way I'm going to make this money up, if, in fact, Goldman does not make this

money up to them from favorable treatment or the market, getting lucky, whatever, I've got to start taking on some more assets and build my investment management business.

And I had all of these funds clambering, primarily Fairfield and Kingate, at the time and Sonya Kohn, you know, and so on, to take in money to do this model trade that the boy genius on Wall Street, named Bernie Madoff, was basically -- had developed to do his trading, and was successfully doing it for a number of clients.

Aside from the -- Shapiro and Picower and so on. I was also doing that type of trading for -- for the banks, the European bank, Banque Privee.

So I decided to take this money in.

Now, one of the caveats -- or one of the conditions of me taking the monies in was that it was going to be long-term money.

And that was for two reasons. Number one, the hedge fund business was a business that I really disliked, because it was known as hot money business.

In other words, the hedge funds, as long as you were making money for them, loved you and would stay with you and so on, but at the first sign of fire, you know, and trouble, they would disappear and take their money back, which, of course, would always come at an inopportune moment.

The -- so I basically said to these hedge funds, look, you know, I don't want -- I don't want to build up a business with hedge funds and then find it disappearing, you know, for some reason one day overnight.

And they, in turn, said, well, look, if you want long-term money from us, that's a different kind of client than we typically have, and we have to commit to those clients that you're going to invest it.

So, ironically, they were more worried about me not investing -- continuing to invest the money than I was worried about them, you know, running for the exits.

So there was a -- an understanding that I would -- even though there was no guarantee on either side, that the understanding was that I was going to invest this money for them, and that they were going to get the type of client

that was going to be a long-term investor.

And they disclosed -- disclosed the client -- the type of client that they had. And I met some of those clients, and those clients were anywhere from Bernard Arnault, from Louis Vuitton, to L'Oreal, the -- the Bettencourt woman from L'Oreal.

Q. Uh-huh.

A. To Swiss bankers and so on and so forth.

Q. So that was the legitimate strategy for this split-strike conversion strategy; right?

A. Right.

MR. BLEICHMAR: Why don't we take a short break and then pick up from here.

MR. REGAN: Yeah.

MR. BLEICHMAR: Let's go off the record.

(RECESS FROM 8:53 A.M. TO 9:01 A.M.)

MR. BLEICHMAR: Back on the record.

BY MR. BLEICHMAR:

Q. What -- when did the money management business became illegitimate?

A. Did it become or illegitimate?

Q. Illegitimate.

A. It started in '92, as I've testified. Although, for some reason, the government and

the court have a hard time believing that, but to this day they've never been able to put forth any evidence that contradicts what I had said.

Q. And how did it become illegitimate?

A. It became a problem, because I had -- well, let me just give you a preamble a little bit. I'll try and make it short.

Market makers, like myself, continuously trade sometimes on the short side of the market. In other words, where we're actually obligated by the SEC rules to maintain a continuous market, which means once we put out a quote it has to be a two-sided quote, regardless of whether or not we actually own a security.

So if I happen to be -- if IBM has been constantly moving up, and I don't have any stock in inventory, I am still required to offer stock out to my clients, meaning from the short side of the market.

So most market makers will -- are continuously trading on both sides of the market. Long, meaning they own securities, have an inventory, and short, meaning the -- they're selling stock they don't own, with the expectation of buying it back at a lower price,

hopefully, or possibly at a higher price at a loss. It is very common, and there is -- as I say, it's part of doing business.

So the idea of -- and, not only that, I mean if you decided you didn't like the market, you could actually go short and just hope the market is going to go down.

But most market makers always have a short condition as a hedge against their long inventory, even if it's a different type of security.

And I, of course, because I was -- I had a business of doing arbitrage since the very beginning, where I was long bonds and short stock and converted them. It was a natural thing for me to do.

So I was in a situation where after I had taken on some money for these funds in the early '90s, that the market went into sort of a -- we -- the market was -- we were in a recession.

The Gulf War, you know, occurred. The market was just doing nothing. And in order for this -- my strategy to work, we basically needed primarily an upmarket. Not necessarily continuous upmarket, but a market that had a lot of spikes in it, where it would give you the opportunity to trade from the long side, and then also be able to shorten the option side and so on.

The -- the strategy basically was that when I was not in the market I would put the money, the capital, that I had to invest from these funds, or all clients, in treasury bills.

That was part of the stated strategy, which was all laid out in documents of what was something that we called trading authorization and a trading directive.

So I was in a situation where I was being pressured by the funds to put this money to work, because when I -- when they -- typically they would send me in money, it would be a million dollars, five million dollars.

The money would immediately go into treasuries, and it would stay there. And it would earn, in those days, a couple of percent in treasuries, as opposed to maybe 12 or 13 percent, which was what the expectation was and the strategy.

So -- but the money would sit there

or -- being stored or parked, as they call it in the industry, in treasury bills, waiting for an opportunity to go into the market.

But since -- as the market sort of refused to cooperate, they were sitting in -- in treasuries.

And I started getting phone calls from these guys, saying, look, you know, you've got to start putting the money to work. You know, we're not interested in just making, you know, treasury bill interest. We don't need you for that.

And, of course, their clients, who were all very aggressive clients, are pushing them, you know, to -- you know, what's going on? You know, the first, you know, months' returns are like two percent, you know.

So I made my second blunder, and I said, okay. Look, I'll shorten the position goal, which I was perfectly legal in doing. There was nothing illegal about that.

If you looked at the confirmations that I was supplying, it said that I am acting as principal. I'm selling stock for them, and this was not a -- not a problem. No SEC regulation

was violated and so on.

And I assumed that it was going to be a temporary situation. So I realized, obviously, I'm now, in reality, earning two percent on the money and paying out in the sense of profits, you know, 12 or 13 percent. So I have a net loss of ten, 11 percent each transaction.

Q. Explain that to me again.

A. Well, the confirmation that they were receiving --

Q. So you weren't executing the transaction?

A. I wasn't executing the transaction correctly. So the transaction is now a bogus transaction. It's -- well, in their minds -- you have to understand that they don't -- they couldn't care less, nor could any other client, whether I am actually long on the stock or not.

That's something that is hard for people to understand, but, as I say, when you -- if you go and you call Merrill Lynch and tell Merrill Lynch, I want to buy Apple Computer, and Merrill Lynch, either from their own inventory, if they're a market maker, sells you Apple Computer, they may not own Apple Computer.

You own Apple Computer. And you

can't -- couldn't care less what Merrill Lynch makes or doesn't make on the Apple Computer. Your contract is with Merrill Lynch, and you own the Apple Computer. And this is the way business is done.

As opposed to what most people think, you know, that -- that isn't the way it's done. They think that they actually own the stock, and there's a physical certificate somewhere, and that they are the owner.

And they are the owner, for all intents and purposes, from a legal standpoint, but there is no -- there's nothing on the other side of the transaction, other than the good faith of the broker, that says he is going to produce that if you want to sell it, and you're going to get the -- you're going to get the dividend, if there's a dividend involved in it, and so on with it.

That's coming from a short return, not as academic to you.

Q. So you would produce --

A. I would produce a confirmation, which would be no different than if Merrill Lynch came to me and wanted to buy Apple Computer, and I

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shorted it, and they get this transaction.
Okay. And they --
Q. But you were only holding the treasuries at that point?
A. And I had the treasuries. Okay.
Q. And so this is approximately 1992?
A. Right.
So they -- as far as they're concerned, they're looking at a transaction, for all intents and purposes, looks to them like a totally normal transaction based upon the parameters that we said that we would follow and so on and so forth.
They're long stock. They're long puts. They're short calls against the stock. For example, they, themselves, as part of the strategy are shorting options that they don't own. You know, they're --
Q. What do you mean by that?
A. Well, the strategy is I buy them stock. I buy them a put, and they sell a call, an index call, short.
So they actually have a completely short position in the call side of the transaction, the index call. The same as I have a short side

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position in the long side.
Now, they're -- they're exposed on that -- that call that they're short, the same way that I'm short on the stock. The only difference is that they own the stock, which is not convertible into the option, but theoretically would move up at the same rate that the call moves up.
Q. Uh-huh.
A. So they're hedged. They have a -- but they actually -- they're selling stock that they don't own, you know.
Q. But at some point these transactions stopped occurring; correct?
You didn't execute the transactions?
A. No. This -- this is -- well, this is when I was doing, let's say, the illegitimate one.
Q. Uh-huh.
A. Okay. I never stopped doing that. So they were -- you know, I would just generate the confirmation. I was short the stock. They were short the call.
Again, I don't know if you're following that, but they basically --

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Q. That's your contract with the hedge funds?
A. That's my contract with the hedge funds. And their -- and their contract -- right. Their contract with me.
So, you know, they -- they have the same short position as I have, except in a different instrument, you know, and it's perfectly legal.
Q. But, on the backside, you were not purchasing this -- the equity --
A. I was not purchasing the equity, which, of course, is a major issue, because there is -- as the market goes up, they're losing money on the short side.
They're also losing money on the put that they're long, but they're not making -- well, on paper they're making the gain on the long side, the inventory, which, of course, I'm short to them, and they don't own it.
So, again, there's nothing wrong with any of this transaction as long as I'm good for the difference.
Q. So let's talk about these investors. You mentioned Fairfield and Kingate.
A. Uh-huh.
Q. Are these also commonly referred to as

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feeder funds?
A. Yes.
Q. Who were some of the other feeder funds?
A. Well, there was Fairfield, who had a number of funds. Kingate, who had a number of funds. Thema, which is a Swiss fund. There was Tremont, which was a U.S. feeder fund, that eventually was bought out by Oppenheimer.
There was eventually Optimal, which was owned by Banco Santander, I guess.
Q. And how did Optimal compare, in terms of size, with these other funds?
A. Well, they --
MR. REGAN: Objection. Objection, but you can answer.
THE WITNESS: They started out, I guess, smaller than -- Fairfield was the largest one at that time, but, just so you can get a scope of the size, I think Fairfield was only -- in '95 was only about 500 million dollars, as opposed to, you know, six billion eventually.
BY MR. BLEICHMAR:
Q. And what was your recollection of Optimal in 1995?
A. I don't recall. I don't recall.

Q. What was your understanding of who were the underlying investors in these funds, in these hedge funds or feeder funds?
A. Well, okay. The understanding was that they were all sophisticated investors.
Q. Now, what does that mean to you, "sophisticated investors"?
A. Well, my investors were basically required to do -- well, they signed documents that basically said that they had a net worth of -- a minimum of -- I would say the smallest was a minimum net worth of 250 million dollars.
Q. Million?
A. Yeah. 250 million dollars -- I'm sorry. $250,000. Numbers get a little confusing to me. $250,000. And they had income of $100,000. And the net worth was exclusive of homes, of real estate.
The -- that was -- they basically deemed to be a sophisticated investor from NCC, you know, regulations and so on. They also signed documents that said that they understood that there was a risk --
Q. Uh-huh.
A. -- involved in the type of transaction

that they were doing, and that the gains were going to be basically short-term trading gains, which inherently had a risk involved in it.
When the feeder funds came to me, I was basically looking at them as typical hedge fund type of investor, which all had net worths of -- in the, you know, millions of dollars.
Q. Meaning the underlying investors?
A. The underlying investors.
Q. So your understanding was that the underlying investors in the feeder funds were -- had a net worth in the millions?
A. Yeah. I mean, now, typically the feeder funds had a smaller type of investors than the regular funds, regular hedge funds, but they weren't -- none of them basically were -- all the feeder funds were -- were basically --
I was of the opinion, based upon the conversations I had with them, that they were not soliciting smaller clients. That these were all sophisticated clients of, you know, substantial net worths in the millions.
And typically these -- that was the kind of investor that invested with these funds. These were not domestic, for the most part,

other than Tremont. And even they had -- they had sophisticated clients.
And most of them were European. They were all European, you know, hedge funds. And the typical clients that they had --
Q. And why were they typically European?
A. Because most hedge funds, big hedge funds, were registered in tax savings. They were registered in the BVIs or Switzerland and so on for -- for tax purposes and for disclosure purposes.
And that's basically what -- where hedge funds, since the beginning of time. They were -- so --
And I was, you know, told that they were these types of investors, because they said that was the only kind of investor that they could get to commit to a long-term -- you know, to a long-term type of investment.
And that made sense also, because they said, look, these people are going to have to liquidate other investments that they have, and they don't want to liquidate these other investments and then come in to you, and then next month you're going to --

Q. Right.
A. -- say, you know, game over. So it was understood. And it was a sophisticated type of a trade. This was a -- you know, not your typical type of hedge fund investment, where they would just buy a portfolio of securities.
It was a hedge transaction. The appeal of this strategy was that you could do large -- commit large amounts of money in a hedge transaction.
Your returns were going to be lower than you would make in just a straight market, long-only strategy, but you -- you had -- the risk was hedged, which would enable them to commit more money than they normally would to just a risk type of a strategy. So this was understood.
Q. Let's turn to -- to Optimal. When did Optimal begin investing with BMIS?
A. I -- I really do not remember.
Q. Approximately?
A. I would assume in the late '90s. I'm guessing, though.
Q. And who was the -- your original contact with Optimal?

A. Manuel Echeverria. What --
Q. Manuel Echeverria?
A. Manuel. Manuel.
Q. You remember him as Manuel?
A. Yeah, Manuel, I knew him as.
Q. And how did you meet Manuel?
A. Well, he was introduced to me, I believe -- I'm not sure if he was introduced by Sonya Kohn or not. I don't know. You know, I'm sort of blurry.
The hedge fund industry is a very incestuous industry, to say the least. So, you know, it's -- who made the introductions was always sort of totally unclear to me. You know, certainly, you know, in hindsight, going back, now I remember it.
Q. And what was your understanding of Manuel's role at Optimal?
A. He was a typical, you know, manager, which basically meant that they were -- they were marketing people.
I mean, the breed of hedge funds that, you know, has developed -- and it was the same with all of my hedge funds, as clients were not the original type of hedge funds, like managed

by Julian Robertson, Paul Tudor Jones, Michael Steinhardt and so on, where they were making decisions of investments. The -- particularly the feeder funds, and even some of the -- the larger funds.
And Fairfield, Kingate, Optimal, they may have been deemed feeder funds, but they were so large they really -- no one really would -- looked at them as feeder funds. They would just basically be, you know, looked at as being a hedge fund.
They -- the managers of these funds make no decisions of investments, other than which sub-managers to invest the money for them. They -- most of them have no ability to determine whether the market is -- is cheap or not cheap or whether the -- or whether they should be buying IBM or General Motors.
They're basically marketing people and salespeople, and they should be people with a sophisticated-enough background to understand the strategy.
I mean, that's what clients pay them for. They pay them for -- to do due diligence and to understand whether the strategy makes

sense or not, but --
Q. What do you -- what do you mean by due diligence?
A. Well, due diligence could be anywhere from making the decision as to the -- does the people that they're going to allocate the money to, does he have a good track record, and, you know -- or does the strategy that he's using make sense.
So if -- if you're looking at a -- if you're looking at someone who is, let's say, just a long-only manager, like a Paul Tudor Jones, for example, or Louis Bacon, you know, those are just names, big names in the industry, who -- whose ability is to their macro investors, or they're -- they're making calls on the market or on individual securities.
What you're doing is looking at their reputation. You're looking at their track record, as to whether or not -- how they perform.
If you're doing a -- an arbitrage type of strategy, which basically was what we were doing, or a hedge type of strategy, then you're supposed to be qualified in understanding the

strategy.
Q. Did you believe that Mr. Echeverria understood the split-strike conversion strategy?
MR. REGAN: Objection.
You can answer.
THE WITNESS: Yeah. I mean it, quite frankly, was not that complicated a strategy to understand, you know, at least --
BY MR. BLEICHMAR:
Q. Why do you say that?
A. Well, it was -- it was, you know, a basic strategy of -- a covered rights strategy. Meaning you buy -- you buy a security, and then you sell an option against that security that's related to that security.
The unique part about our strategy was, instead of buying a straight IBM and selling IBM stock, which is what we used to do many years ago, which is known as a covered right, once index options became, you know, on stream in the '80s, we would buy a portfolio of securities, meaning 15 securities, that had a correlation to the S&P index, which monitors.
So those securities are correlated within 95 percent. So as the equities move up

or down, the hedge moves up or down, and there's always a difference in arbitrage spread between those transactions.

So -- and the strategy that we used we laid out. It was -- it was documented. It was instructions of what -- of what these securities entailed, what the correlation was, and it was easy to monitor --

Q. Right.

A. -- those strategies. So it was -- it -- it did not take any rocket science to -- to understand the strategy for -- certainly for a manager, you know.

Q. So you mentioned that you met Mr. Echeverria approximately in the mid '90s; correct?

A. Uh-huh.

Q. And --

MR. REGAN: Objection, but go ahead.

BY MR. BLEICHMAR:

Q. And over the years how many times or how often would you have contact with Mr. Echeverria?

A. Well, it varied. There was always -- there was the initial meeting or series of meetings.

Q. Do you remember those?

A. Yeah. I mean the original meeting would be a -- an exploratory meeting, where the manager or, you know, a group of people, you know, that was in his organization, could be two or three, would meet me.

We would sort of feel each other out, as to whether or not, number one, I was -- thought they -- they were the type of people that I would want to do business with, that they had the type of clients that I felt the strategy was suitable for and that they basically understood the strategy.

And that, you know, they had a reputation of being, you know, legitimate. Meaning they weren't representing necessarily hot money or, you know, questionable money and so on.

So there was sort of a -- everybody was taking each other's temperature. Of course, you know, I had at that stage a substantial reputation in the industry. So they were -- most of them knew me, knew of me.

Their clients certainly did not, because outside of the industry itself you'd be hard

pressed to find people that knew who I was, but within the industry, both from the regulatory side or from the industry side, we were certainly well-known.

We were doing, by the time they came on stream, ten percent of all of the equity trading, as I said. So our market making operation was highly regarded, and --

Q. When you say, "by the time they came," you're referring to --

A. Echeverria.

Q. -- people at Optimal?

A. Yeah. So that would be a meeting. And, you know, then another meeting would be with possibly their due diligence team, which could be one or two people.

Q. Who do you remember from their -- from Optimal's due diligence team?

A. Well, I remember Jonathan Clark, was one person. It was -- I will tell you that I was never 100 percent sure of who I was meeting with.

And this was because a lot of these funds, they would try and bring up people that were not supposed to attend the meetings. In

other words --

Q. What do you mean by that?

A. Well, I made it very clear that I was not interested in entertaining a competitor. All right. I was not interested in them bringing up a -- someone who ran their derivative desk or run their arbitrage desk or equity trading, who was going to pick my brains and try and mimic my strategy.

So I said, look, I don't mind meeting with the manager. I don't mind meeting with a legitimate due diligence person, who was not deemed to be a competitor, but that was the understanding.

And that privilege was sometimes followed and sometimes abused. Sometimes people would show up, who -- even though sometimes they would give me business cards. Sometimes they inconveniently didn't have a business card.

Sometimes I would find out that they actually were running the derivative desk or they were running their equity trading desk.

And sometimes they were their clients. Sometimes it was a large investor that was showing up and just sat there, listening to the

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presentation.
Q. And why didn't you want an investor to meet with you?
A. I wouldn't want an investor to meet with me.
Q. And why not?
A. Because it was understood that I was not doing retail business. I did not want investors -- basically it was -- there was -- there was always an understanding that I was not to be marketed by these funds for the following reason.
I -- my reputation in the industry was that of a wholesaler. My basic clients in the market making side of my business were other dealers, who would basically not be thrilled with me going after their retail clients or institutional clients.
So Goldman Sachs or Merrill Lynch would not be interested in me, you know, taking their clients away from them, whom might be investing in their own hedge funds or their own investments, and putting money with me.
So basically I said, okay. Everyone in the industry knows that -- that funds are fair

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game for everybody, but I never would solicit retail clients, whether they be John Q Public or whether they be institutional type of clients.
And I didn't want my reputation as a wholesaler to be, you know, changed. So the -- also, what I basically felt was that, look, these funds are making a fee in commission for their transactions for doing this.
Q. Uh-huh.
A. Therefore, it is their responsibility and their job to sell and explain the trading that's being done to their clients, not mine. I don't want their clients calling me up and asking me to -- to explain the strategy for them.
I didn't have really retail clients at all, other than this handful of clients, which were not really retail.
And, also, they didn't want their clients back-dooring them. In other words, the last thing they wanted was, you know, Bernard Arnault, just to use a name, saying, listen, why am I paying, you know, Fairfield, you know, you know, five percent, or whatever they're making --

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Q. Uh-huh.
A. -- when they're not making the decision? You know, Madoff is the guy, and I can go directly to him.
So there was always this understanding that they didn't want me to deal with their clients. I didn't want -- and I didn't want to deal with -- with their clients.
And this grew up as being this mysterious, secretive type of an atmosphere. In other words -- which, of course, at -- competitors in the hedge fund deal -- deal, that were not my competitors, and some of the media looked at this as don't ask, don't tell.
There were articles written, Bernie is very secretive and so on and so forth, but, quite frankly, the hedge fund industry has always been cloaked in mystery.
In other words, the original hedge funds would never consider talking to the clients of -- of a -- someone that's bringing them money.
If you ever called up Michael Steinhardt and said, I want to have a meeting with you, or Paul Tudor Jones or anybody, and said, explain

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to me what you're doing and tell me what you're investing in the market, they would say, you've got to be kidding.
I used to always use an example that if you think that George Soros would let you know when he's going to -- when he was going short pound, he -- he wouldn't. So --
And what you saw was a typical disclosure that most hedge funds to this day -- but it's changing. There was no transparency.
If you were a client of Paul Tudor Jones, with a typical hedge fund, you got a sheet of paper every quarter that said, your equity when you started was X dollars. It's now this dollars. You never knew whether you were in soybeans, potatoes, futures, equities. Nothing. That was it.
The attitude was, you wanted to invest in a hedge fund. You put your money up. You take your chances and don't ask any questions. That's it.
Because everybody was paranoid about everybody else copying their strategies, knowing when to go in the market and so on.
Q. Who else did you meet from Optimal, other

than Mr. Echeverria and Mr. Clark?
A. Well, they came up once, I believe, with, you know, like one or two due diligence people. It was -- it was difficult for me to remember, because sometimes they had some of the people from Bank Santander coming into meetings.
Sometimes it was people from Optimal coming up. Sometimes it could have been -- but not necessarily with them, but I don't know, their auditors, you know, coming up.
It -- you know, it was very difficult for me to -- to -- to know or to remember who was coming, who I basically met with.
But clearly did not encourage meetings. It was not -- I would spend endless amounts of time --
Q. And how would you do that? How would you not encourage meetings?
A. Well, I would -- what I would say to people is, look, the strategy is a relatively simple strategy. Okay. It is -- I'm never going to tell you when I'm going into the market or when I'm -- when I'm getting out of the market.
I said, I'm only going to tell you if I

change the strategy, which, quite frankly, I'm not allowed to do, you know, without notifying you, and I never did.
I said, so there is no reason for -- since I'm never going to tell you when I'm in the market or out of the market until it's after the fact, because I don't want you -- I'm not going to telegraph what I'm doing, for obvious reasons. Nor would anybody.
I said, so that -- and since you are getting more disclosure than you get from any of your other hedge fund investments. In other words, they are getting within a couple of days of the transaction a confirmation telling them exactly what they own, a monthly statement that tells them all of this.
They know what equities they're long, what options they're long or short. They understand all of that. That is something that was unique to -- to our model.
And they didn't -- it was -- there was not a reason to beat it to death all of the time.
That being said, they always felt an obligation to stay in touch with me, because

that's what they were getting paid to do. And as much -- as much as I --
Q. What do you mean by that, that that's what they were getting paid to do?
A. Well, that's what -- that's what they're -- they're managers. They're getting paid from -- whether it be Banco Santander or whether it be from their -- from their client.
And, don't forget, most of these clients were investing for other hedge funds. So the fund of funds, their clients, sometimes were large network individuals. Sometimes they were -- they were smaller hedge funds. Sometimes larger hedge funds.
So you had, I guess, somebody like Optimal investing for -- for banks like -- from other Swiss banks, you know, who were saying -- who were, you know, pressing them for information.
And the call I would always get is, is Bernie in the market or out of the market? Every time the market was up, they wanted to make sure they were in the market. Every time the market was down, they wanted out of the market.

So there was always this -- and I used to say to them, you -- when you get your confirmation, you'll know what you're -- what you're doing.
Q. You mentioned previously the term due diligence. Are you familiar with the term operational due diligence?
A. Sure.
Q. And what is operational due diligence?
A. Operational due diligence normally means to make sure that your back office, your operations side of the business, my operations side of the business, is equipped to handle things like custody of the -- of their assets, of actually clearing and settling the transactions involved. That there are the risk controls and there -- that -- that the transactions can settle, take place.
It's a crucial part of -- of anybody that has an account at any brokerage firm.
Q. And is it your general understanding that part of operations and due diligence includes making sure that transactions actually take place?
MR. REGAN: Objection.
You can answer.

THE WITNESS: Well, that's -- it's very limited. Their ability to know that a transaction ever took place is, quite frankly, limited.

BY MR. BLEICHMAR:

Q. And why is that?

A. Because, as I say, number one, brokerage firms typically trade sometimes on the long side or the short side of the market. They're not going to disclose that to a client.

Q. Is -- is the ability -- is the reason clients are limited -- or one of the reasons why clients were limited in confirming whether the transactions took place in your case the fact that you self-cleared?

MR. REGAN: Objection.

You can answer.

THE WITNESS: Well, it wouldn't matter whether I self-cleared or whether I cleared through a bank or another firm, because they would not have the ability to confirm with a clearing agent anything about my business.

In other words, if you -- if you clear through Bear Stearns, your client could not call Bear Stearns up and ask them for any information

related to you, other than the fact --

There is a big difference, though. Bear Stearns would be the one that would be sending them the confirmation. So they would know that Bear Stearns -- they would get a confirmation from Bear Stearns and a statement from Bear Stearns.

However, Bear Stearns would not be free to disclose to the client whether or not the -- whether or not I actually was long the security or short the security.

BY MR. BLEICHMAR:

Q. So, in other words, if you used Bear Stearns as the institution that issued the confirmations, that would be a difference in the way you -- the way BMIS --

A. Right. The only -- the only --

Q. -- BMIS conducted business?

A. Yeah. The only difference would be they now had an independent name of someone, of a firm, that was, let's say, larger typically than me. Okay.

Q. But in the BMIS situation the feeder funds only obtained confirmation of their trades based on BMIS-prepared confirmations?

A. That is correct.

Q. And was that a critical aspect of what eventually turned in to be an illegitimate business?

MR. REGAN: Objection.

You can answer.

THE WITNESS: No.

BY MR. BLEICHMAR:

Q. Why not?

A. Well, let me -- let me figure out how to address that. Well, I take that back. They would --

Q. "They," meaning who?

A. If the clearing firm that I was clearing business through, let's say, Bear Stearns, saw that I was not buying securities, they would know that Bernie is constantly short these securities, because unless for some reason I had the securities custodied somewhere else, other than them, they would say, well, he's buying and selling stock, and there's no deliveries physically coming in and out. So, yeah, they would be --

Q. So the answer is, yes?

A. Yeah. They would know that. They wouldn't be at liberty to disclose that to the

client, but they would -- they would worry about it themselves.

Q. Let me take a step back.

Did the feeder funds, such as Optimal, have any way to independently verify that you were executing the trades for them?

A. No.

Q. And why is that?

A. Because they do not have the ability to check with the custodian that I was using. They were of the opinion that --

Q. And who was the custodian you were using?

A. Depository Trust.

All of --

Q. There was no --

A. Or -- and it was some of my banks that held treasuries for me.

Q. And you were generating the confirmations yourself; correct?

A. Correct.

Q. Did you -- did BMIS keep segregated accounts in the name of the feeder funds?

A. Yes, on my books and records. Yeah.

Q. Did you keep -- did BMIS keep segregated accounts on behalf of the feeder funds at

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third-party institutions?
A. No.
Q. And why is that?
A. Because it typically was not done. DTC would not have accounts typically for -- they would have one account for the broker-dealer, and that would be a commingled account, unless the broker-dealer was borrowing money on the securities.
Then they would have the account -- the securities segregated in a loan account at DTC. But since I was never -- I did not have margin accounts with these clients, there was no leverage being used for these clients, they wouldn't have it.
Q. Did anyone from Optimal ever ask you whether you had set up independent segregated accounts on their behalf?
A. Not at DTC, because they say that was not standard operating procedure. They -- they -- they asked. And we told them that on our books and records, in our stock record, in our records Optimal had an account, as did all of the other funds in their name.
And the securities -- if you looked on a

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stock record, it would show -- it would show Optimal, Fairfield, so on and so forth, here on X number of securities.
And the contra side of that would be what's known as your box or the custodian, which would be DTC. And they had a balance, if they were -- if it was being entered properly, which they were not -- not being, because there were no securities on the DTC side.
Q. We've previously discussed counterparties; right?
A. (WITNESS NODS HEAD UP AND DOWN.)
Q. Can you just briefly describe what -- again, what the role of the counterparties were in the split-strike conversion strategy?
A. A counterparty is the person who is on the other side of the transaction. Meaning if -- and the counterparties in this situation are the -- really are only important on the derivative side, on the options side, because in the equity side the counterparty was always basically me, as principal, and the counter --
My counterparty would be another broker-dealer, or, in reality, after the first day of the trade, it would be the clearing

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corporation.
But in the options side, since it was an over-the-counter option, it would be another derivative dealer or a -- or a bank, or it could have conceivably been an options-clearing corporation.
Q. Did Optimal or anyone at Optimal ask you to disclose the identity of the trading counterparties?
A. Yes.
Q. And did you disclose their identity?
A. No.
Q. And why not?
A. Well, I basically said, number one, I mean, typically you would not disclose the name of your counterparties for competitive reasons.
Q. Did the counterparties exist?
A. No.
MR. REGAN: I'm just going to object. I think you have to give the witness a chance to answer --
MR. BLEICHMAR: Oh, go ahead.
MR. REGAN: -- some of these questions. I -- maybe you answered that last question, but --
THE WITNESS: No. I mean --

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MR. REGAN: I think you're fairly interrupting him.
THE WITNESS: Well, I -- you know, obviously, I would not want to disclose the name of a counterparty who didn't exist, because they might have the ability to check with that counterparty.
Now, typically a counterparty would not necessarily disclose that, but you never know.
BY MR. BLEICHMAR:
Q. What was your understanding about BMIS' obligation to disclose the name of a counterparty to Optimal or the other feeder funds?
A. Well, in a counterparty, you know, when you're acting as agent in a transaction, whether it be on equity or whether it be a -- an option, you're actually required to disclose the name of a counterparty if they ask you that.
In other words, on the back of every confirmation there's a legend that says, if we acted as agent, the -- the -- the time of the transaction and the -- the -- I forget the language -- and the party to the transaction will be disclosed upon request.
Q. And did Optimal ever request that

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information?
MR. REGAN: Objection.
You can answer.
THE WITNESS: They never asked it on the equity side, but they asked it on the Optimal -- on the option side. That was, you know, asked a number of times.
And my response always was that I do not disclose the counterparty on the derivatives.
BY MR. BLEICHMAR:
Q. And what was their reaction to that?
A. Well, they weren't happy about it, but they knew that was my -- that was going to be my response, because that was my response to everybody.
And, as I said, one fund always spoke to another fund. So typically, because I would -- it would get back to me. The other fund would say, you know, Optimal just called me up, and, you know, said that, you know, they were up to see you, and you wouldn't disclose the counterparty.
And Optimal said, did he disclose the counterparty to you, meaning Fairfield? And they would say, no. He won't -- he won't

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disclose it.
Q. Did anyone at Optimal ever tell you if you don't disclose the name of the counterparties, we will withdraw our money?
A. Well, there was -- no. They never said that. The closest it came to that was in the late 2000's there was, I guess, a change in regulations.
And I don't know whether it was Ireland or Luxembourg, or wherever they were registered, where they -- it was part of the Basel agreement, whatever they -- they had to just -- they had to know who the counterparties on the transactions in order for them to maintain their registration.
So I received a phone call from a number of these funds. One being Thema, and another one being Optimal, for sure, that basically said they have this directive now that they're required to know the counterparty.
And I said, well, I'm -- you know, I'm sorry, but I'm not disclosing that. And I said, your -- you know, if -- if your -- if -- your choice is to get the name of that or take the money back, then you're going to have to take

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the money back, because I'm not -- I'm not -- I'm not going to disclose that.
Q. And what did Optimal do?
A. Nothing. They said to me, don't worry about it.
Q. "Don't worry about it." And what was your reaction to that?
A. I said, fine. I said, I'm not.
Q. Do you believe, as a professional in the finance industry for many decades, that that was reasonable --
MR. REGAN: Objection.
Q. -- from their standpoint?
MR. REGAN: Objection.
THE WITNESS: I would say that you would have to understand the mentality of the typical hedge fund manager. They -- their livelihood depended upon them maintaining their relationship with me, which was a very profitable relationship for them personally, as well as for the -- the bank or their fund.
They had every reason to believe that, you know, if they threatened to take their money back, I would send it back to them, because historically whenever they wanted money,

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regardless of the amount, it could be hundreds of millions of dollars, you know, within days of them making the request the money was returned.
So they never doubted that I was not going to release this information. Whether or not, you know, that should have been a signal to them, of course, that's a different issue.
BY MR. BLEICHMAR:
Q. When you say, "their" -- "their livelihood," what are you referring to?
A. Their salary or fee, whatever they were getting.
Q. And how -- how -- what was your understanding of how that worked?
A. I never really knew or cared to know what their fee was. I know what -- I sometimes knew what the fee was that the hedge fund was making, because it was part of their offering documents, which sometimes I saw and sometimes I didn't see.
But typically in a fund -- I think Optimal was making one and a half percent of the amount of money that they -- they managed.
Sometimes it was -- it included one to one and a half percent, plus 20 percent of

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whatever the profits that I earned on them, which was standard with a firm like Fairfield.
Q. So what would happen if Optimal withdrew the money that was invested with you?
A. Well, they would lose their fee. I mean, I don't -- Fairfield, for example, made, you know, over 100 million dollars a year from me for their managers.
I don't know what Manuel's salary or what his cut was, but I think Optimal was on a -- sort of a one and a half percent. But one and a half percent of a lot is a lot.
Q. So was it your impression that Optimal didn't press you further on the name of the counterparties, in part because of the fees they were charging?
MR. REGAN: Objection.
You can answer.
THE WITNESS: I -- well, let's put it this way, their choice was -- I didn't give them a choice. Well, I did give them a choice. Their choice was to not -- not get this information and take their money or -- that was it, you know.
And, of course, if they did that, their fee

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would have to be -- they wouldn't have a fee from me. They would have to take -- put the money somewhere else and hopefully make a fee and a return, you know, somewhere else.
So, I mean, clearly they had -- the manager, as did the bank, you know, would have an ax to grind, you know, in this situation.
BY MR. BLEICHMAR:
Q. What do you mean by, "an ax to grind"?
A. Well, I mean the consequence of them pressing me for -- for the counterparty was basically to discontinue the relationship. That was it.
Q. Did Optimal or Manuel ever ask you to disclose, perhaps not all of the counterparties, but perhaps only one counterparty?
A. No.
Q. Would you have invested in BMIS if you were in Optimal's shoes and BMIS refused to identify any of the counterparties?
MR. REGAN: Objection.
You can answer.
THE WITNESS: Me?
BY MR. BLEICHMAR:
Q. Yes.

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A. No.
Q. Why not?
A. Well, knowing what I know, it was something that, you know, I wouldn't -- you know, I wouldn't do. The -- but, you know, that's -- that's with my knowledge of both my own -- what I was doing here and my knowledge in the -- in the business.
Q. Putting --
A. No. In other words, based upon my knowledge of what was happening in my own firm, and also my knowledge of what goes on in the industry, I wouldn't be investing in any hedge funds, but that's a different issue.
Q. What was -- what was your understanding about what was going on in the industry?
MR. REGAN: Objection.
You can answer.
THE WITNESS: Well, I don't know that everybody in the industry was -- was committing the crime that I was committing. I would say that's probably not the case.
But what I would say is that there is a -- there is a culture and a systemic problem with the industry, with the securities market today,

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that, quite frankly, makes it unsuitable for anybody to invest, other than somebody that just wants speculation.
Now, that's -- that's my feeling. It's -- it's always been that -- that -- I've always been of that opinion. I've been very -- I've been very -- people have been very critical of me because of my opinion on hedge funds in general from -- since the -- including the hedge funds that I was dealing with, knew that I felt that way.
And I think that now things that I've been warning people about for years is -- is being uncovered. It's a big casino.
And, although, not everybody may be doing what I did, and certainly am -- I assume is not, and committing out and outright fraud, but, for all intents and purposes, what they are doing is no better. It's just being masked or guised in certain other things.
Now, that may sound self-serving and a rationalization on my part, and I wouldn't blame anybody for -- for feeling that way, but 50 years in the business, in every aspect of this business, from the regulatory side to the

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operational side, to the marketing side, it's -- it's a total disaster.

BY MR. BLEICHMAR:

Q. Going back to the issue of the fact -- excuse me. Going back to the issue of the fact that you did not disclose any of the counterparties, putting aside that you knew that you were committing a fraud, if you were in Optimal's shoes, and you were going to invest in BMIS and BMIS was not going to disclose the name of the counterparties, would you have invested in BMIS?

MR. REGAN: Objection.

You can answer, if you can.

THE WITNESS: Well, in fairness to Optimal, or to any of my clients, I had a reputation in the industry that was, you know, a very good reputation.

I had a substantial amount of capital that ranked me within the top couple of percent of the securities industry in capital. And, considering the type of business I did, that was even more substantial.

The -- and, you know, I had a pedigree from the regulatory side and an image, which, of course, now had been totally, you know,

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discredited.

So the big question, quite frankly, in everybody's mind, from the day that this thing was uncovered until probably today, present day, was why did Bernie do this.

I mean, everybody was -- it was an embarrassment to the SEC, to the NASD, to -- to everyone.

BY MR. BLEICHMAR:

Q. So why did you do it?

A. Well, because I allowed myself foolishly, as I said, to be trapped into something. And what I looked at as being a temporary situation, that was going to work out well for everyone, my clients, as well as myself, I, you know, decided to take the risk and convinced myself that it was going to work out.

I then, after awhile, became aware of the fact that I was not going to be able to extricate myself from this mess, and then didn't have the courage or the character, you know, to -- to fess up to it.

And it's something that, you know, I live with every day and try to come to grips

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with that. You know, I destroyed, most importantly, my family.

And it is -- it was never done, in spite of the fact of what people might think, to be able to be successful and make money, because I was worth well over a billion dollars before I came off the tracks.

It was partly ego. Partly I just was convinced that I would be able to accomplish what I wanted to accomplish. I had always done that. You know, I had -- against all odds I had built a business, a market making business, that everybody said was impossible to build.

I had gained a huge amount of respect. I fought, you know, the establishment, the industry, the regulators, everybody, to build a business. And I did a lot of good. I also made a lot of people very, very wealthy.

And, in spite of what I did, no one in my opinion will be a net loser on this situation. Of course, none of that gets reported or hasn't yet.

Although, people understand that, but for 35, 36 years I ran a perfectly legitimate business and made a great deal of wealth

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possible for everyone, including myself.

So when you do that, you -- you develop a sense of confidence that you can pretty much, you know, do anything, you know.

And you also have to understand that -- which is something that I'm trying to work with with Harvard and other people in, is that there's a culture that exists in Wall Street and in business in general that, you know, things are done that the lines get blurred, and that as, I guess, even Steve Jobs felt in his book, rules don't apply to -- to everybody.

It's -- it's -- it's ridiculous, but it's a fact of life.

And I -- I wish I could -- I wish I could acknowledge the fact that I knew that what I was doing -- that I didn't know what I was doing was wrong or that it was against the law, but I operated in a business that every day people do that to a certain extent, and it works out.

And, quite frankly, which is being demonstrated now as at every level of the business, from the highest level on, people break rules, violate trust, violate the

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fiduciary capacity, and nothing goes unpunished.

It's, you know, from the treasury secretary, you know, on down, and everybody stands there. And there's one article or editorial after another in the newspapers today that basically confirms that.

It's -- you know, it doesn't make me feel any better. It's something that I knew all along, and maybe had a greater impact on my psyche than I thought that allowed me to -- to do this.

But you have to understand that for 50 years I operated at every level of this industry and was witness to all of the rules and regulations. I -- I've framed most of them in the trading industry.

I was on the committees that built them. I served on the federal regulation committee, which includes the general counsels of every firm, primary firm, in Wall Street, and for longer than anybody in the industry.

And I watched general counsels of the major firms acknowledge that their firms were violating the rules left and right, that the CEOs knew what was going on, to the point where

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they refused to certify what the SEC wanted them to certify that everything was okay.

And their response was, I'm not certifying this. And you're going to jail, because I know -- let the CEO certify them, these documents, and that way they'll have the money. You know, I'm not expendable, but -- I mean, I'm expendable. They're not.

So none of this makes me feel any better. Okay. And it's probably not going to make anybody else feel any better, but it's -- it's a -- it's pathetic, but that's what is -- that is what is going on, and it had an impact on me.

So when you ask, why did I do it, I ask myself that every day, every day. And I'm sure my family asks that every day. And the regulators ask it.

Mary Shapiro has probably been mortified and embarrassed, you know, as the chairman of the SEC, you know, who has a close relationship with me. So does a lot of the other attorneys work there.

Q. Are you sorry about what you did?
A. Of course I'm sorry. I mean, you know,

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I live with that, you know, with that -- my son took his own life because of -- because of what I did. So --

But me feeling sorry, it doesn't change anything, you know. The only thing I -- that's -- the only thing that I feel good about was that when offered a deal by the prosecutor to -- to, you know, come forward and cooperate to get a lower sentence, I refused to do that.

And my attorneys didn't understand it, advised me not to do this, but -- you know, not to not cooperate, but I said at the time, and since then has been proven to be correct, that the best thing I could do for my clients was to -- to get the money back from the people that were complicit in the crime. Namely, Picower, Shapiro, Levy and some of these other people.

I said that --

Q. Why were they complicit?
A. Well, because they had violated tax laws based upon what I discussed with them and other things that I knew that they were doing with people in my firm, bookkeepers, who are all now under investigation.

And I said, look, I have nothing to lose

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at this stage. No matter what I do, no matter how I cooperate, I'm going to be sentenced to a long term. I'm going to wind up probably dying in prison.

And these people are all aware of the fact that I have information that will send them to prison. That, you know, the best thing I can do would be to let these people know that unless they come forward with the money, return it, and the investors get -- become whole, then I am going to give the evidence to the government that I have.

This was not good enough for the government to reduce my sentence or anything else. And I said, okay. I said, it's sort of academic, as far as I'm concerned.

I said, you want criminal information. I said, criminal information is not going to matter, because these people are going to be dead anyhow by the time you bring it.

They're 90 some odd years old, other than Picower. I said, his health is questionable. He'll never survive long enough anyhow. He's had four quadruple bypasses, you know.

I said, it's -- you'd have to let me do this my way. I contacted these people, and I said to them -- I laid it out to them. I said, look -- when I was on bail, I said, you either come forward or I'm going to release the information.

Q. When you say, "these people," who are you referring to?

A. Picower, Shapiro.

And then -- believe me, I had it. And it took a year for Picower to finally say to me, okay. I'll come down. Let me have this information, you know. He said --

And I said, I'm not -- you know, fine. I said, it's -- there's no conditions attached to it. I said, I'll give you the information. I'll tell you where to look.

By that time, you know, Picower --

Q. Picower?

A. Yeah -- no. Picower was dead.

Q. Okay. So who came down?

A. He drowned in a swimming pool.

Picard and his attorneys. They came down for two days. They had six or eight attorneys spend two days -- four days here. And

I laid out all of this information.

Of course, Picard said, well, we sort of know about this, because we can see what you did and this. I said, fine. I said, look, I said, you know, you're going to get the money back.

And, of course, everybody said it was a pipe dream. They said, this is not going to happen. You know, no one is going to come forward with all of this money.

And I said, it -- I can't guarantee it, but I -- I said, I know it's going to happen, because these people, you know, really have no choice.

And at this time I became aware of the fact that Picower had an estate of nine billion dollars. It was reported in the papers. So, in spite of the fact that he told me he was wiped out and couldn't have -- didn't have the money, which is why I started doing all of this, because I realized he's not going to be able to make me whole, and I'm not going to be able to make the money I lost on the hedges. So that's what started this whole cycle.

You can imagine how I felt when being in prison I read in the newspapers that the guy had

an estate of nine billion dollars. So I thought, not only was I stupid, you know, the guy lied to me. Which, of course, you know, I guess, I lied to a lot of other people. So --

Well, his wife, of course -- he -- he died of a heart attack in a pool. I'm sure it was inflicted by knowing what was going to happen.

She came forward with the seven billion dollars. Shapiro came forward with close to a billion dollars in reality. Levy's family came through with 250. Other banks came through with 500. This one did a billion. This one --

The reality of it is, the money is all going to be recovered. At least that's my -- and this -- this has nothing to do with the billions of dollars that all of these people made for the first 35 years of doing business with me.

So it's a longwinded way of saying, how did it happen, why did it happen, do I feel remorse. I don't have a -- a son. I lost my son. For all intents and purposes I've lost the rest of my family, and I turned what would have been a great legacy into a total disaster.

So, you know, do I feel guilty with some of my investors? Yes. There were some people that were friends of mine, who could never imagine or believe that I would do this.

And, of course, they'll never believe that I thought it was a temporary situation, but, you know, I would be less than human.

But, according to my psychologist, who I spend endless time with, for someone who never believed in getting help, was not a thing that Jewish people did, as you know, the -- people compartmentalize things, is the term, the psychological term they use. That's how --

Q. Is that what you did?

A. Yeah. I mean, that's what she claims. I mean, mafia people kill people all day long. And I sit out in the yard with one of them, who is, you know, Carmine Persico, who was accused of killing 21 people, and he's the sweetest man.

And family comes down and visits him, and he sits here. And you talk to this guy, and you think this can't be someone that would be a cold-blooded murderer. And I'm sure people say that about me, you know.

So, look, I never understood how people

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go to war and kill people, and it turns out that they don't survive, a lot of them, you know. This posttraumatic stress is becoming more and more common, you know. So people do it.

And I guess -- look, and I -- I -- I can't tell you that I didn't sit there every day and say, what I'm doing is wrong, and I should be punished. I knew I would be eventually, but I didn't know how to get out of it.

And I was responsible for 200 employees that never worked for anybody, other than me, and were following me blindly, not knowing what -- not having a clue as to what I was doing.

My own son didn't -- sons didn't know this, nor did my wife, nor did my brother. They --

You know, how I did that is something I -- I still can't figure out. I -- I figured I would die from the stress, you know. It's -- I think someone should do a study of my brain to figure out how I -- I don't think anybody can figure that out. You know, I certainly can't.

So if you ask me, do I have remorse? I don't know how you could have any more remorse

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than I have.

MR. BLEICHMAR: Why don't we take a break.

MR. REGAN: Okay.

(RECESS FROM 10:17 A.M. TO 10:48 A.M.)

MR. BLEICHMAR: All right. Let's just go back on the record.

BY MR. BLEICHMAR:

Q. Mr. Madoff, earlier we were discussing Optimal and the disclosures that you made to Optimal; correct?

A. Uh-huh.

Q. Did Optimal ask you to disclose the amount of assets under management of BMIS?

A. Yes, they did.

Q. And did you disclose that?

A. No.

Q. And why not?

A. Well, the real reason was that I didn't want them to know how much money was under management, because it was a large amount. And it would have made the credibility of the ability to put that much money to work, you know, very difficult at that stage when they started to ask me that.

Q. And why -- go ahead.

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A. Well, they -- they -- in the beginning, I would say that most people would not disclose how much money they had to work.

There was a difference between me and a hedge fund. A hedge fund always had to disclose how much money they had working. It was part of their marketing thing.

The more money that they had working for them, the more people felt comfortable with them. It showed that they had, you know, a lot of credibility. They had a lot of power and so on.

Brokerage firms, for the most part, would never disclose this. I mean, some of the bigger ones do now. Again, for the same reason that hedge funds do it.

But smaller hedge funds, or the old-fashioned hedge funds, like George Soros, Julian Robertson, those people, that culture never disclosed any of this kind of information.

So it was not unusual at that stage for me to say, look, I'm not disclosing that. It's substantial. And that was all I would say.

At a later date, when the number became so large, it would have then been a signal that

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there was a potential problem.

Q. And did Optimal or anyone at Optimal pressure you in any way to disclose the amount of assets under management?

MR. REGAN: Objection.

You can answer.

THE WITNESS: Periodically people would ask the same question, you know.

BY MR. BLEICHMAR:

Q. And when you say, "people," who -- who are you referring to?

A. Managers.

Q. So other managers, other than Optimal?

A. Right.

Q. And why would the size of the assets under management that you had, in your view, would have indicated a problem?

A. The market impact.

Q. And what does that mean?

A. Meaning that when I was moving in and out of the market it would be more difficult to not move the prices.

Q. We talked about counterparties earlier; correct?

A. Uh-huh.

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Q. Did Optimal ever ask you or anyone at Optimal ever ask you to see copies of option agreements with the counterparties?
A. No.
Q. And why would the option agreements with the counterparties have been important?
MR. REGAN: Objection.
You may answer.
THE WITNESS: Well, typically you would want to see them to make sure that you had them. I mean, it was standard operating procedure of an over-the-counter option for there to be a contract.
Now, typically the contract would have the name of the counterparties on them. Our particular option contract did not have the name, but it did say that the name would be disclosed upon a default, because they had -- that would have been necessary in order for them to be able to settle the transaction, because they -- since I was acting as an agent, they would have to know who the other party was.
But the thing that Optimal did not pick up on, nor did any of the other funds pick up on, was that because I was acting as an agent, that

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information was required to be disclosed if somebody asked for it.
So what they should have done was say, look, you're required to disclose this information. They never did that, nor did anybody else.
BY MR. BLEICHMAR:
Q. Is there anything else that, in your view, they should have done that they didn't do?
MR. REGAN: Objection, but you can answer.
THE WITNESS: There was nothing else that they really could have done. What they could have done, which I'm not sure whether they did or did not do, was speak to other derivative dealers and find out did I -- because they were of the opinion that I was using derivative dealers.
Now, there's a limited number of derivative dealers that were in the -- that would handle this kind of business, people like Credit Suisse, Goldman, Merrill, so on.
Now, they -- they may have asked them, and they may have, you know, said, are you doing business with Madoff? Since they weren't, they would have typically gotten an answer, no.

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BY MR. BLEICHMAR:
Q. And why would that have been important?
A. Well, it would have eliminated a lot of the dealers. I mean, there's maybe 20 dealers theoretically. You may have called 15 of them. You're not getting an answer.
Now, if I was doing business with them, they probably would have said, I can't disclose that. But since I wasn't doing business with them, they would say, no.
And I do know that -- or at least I read that in some documents that I received from somebody, from some lawyers, that a question was asked of some dealers, and they said, no.
Q. And what -- and what does that mean to you?
A. It calls into question whether or not I was doing the contract.
Q. Did Optimal ask you whether Optimal -- well, let me start a step before that.
Does the phrase doing a walkthrough of a trade --
A. Do what?
Q. Do a walkthrough of a trade, is --
A. A walkthrough of a trade?
Q. Yeah.

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What does that mean to you?
A. A walkthrough of a trade would be, explain to me what you do, how you put -- set the trade up. And typically -- and we would -- we would do that.
Some people did ask us that. And we would say -- you know, we would explain that we -- first of all, they were of -- we had a system, an electronic system, that we had built that used to do the -- used to do the trades that would --
It was a system called -- well, it was a system that we developed, called Primex Trading System, which was a system that we originally built that we developed. Meaning BMIS developed it.
And took on as partners Merrill Lynch, Goldman Sachs, Morgan Stanley and Smith Barney. So the five of us were partners in this system. We owned 50 percent. The rest of them all owned lesser amounts.
Which was a trading platform that was going to compete with the New York Stock Exchange. Very similar to what's now referred to as the Dark Pools, but at that time it --

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that did not exist.

That was a system that was developed that was -- had a tremendous amount of fanfare, because of who my partners were and the fact that we had developed it.

So there was huge coverage in the Wall Street Journal and so on about this. And this, I guess, must have been in the early 2000's, something of that sort.

And it was such a threat to the New York Stock Exchange that the New York Stock Exchange bought off my partners by making side deals with them on the specialists posted on the floor, rather than have them send the business to me.

So all of a sudden all of my partners, except Citicorp, which was now -- which was part of -- Smith Barney was part of, were all basically out of the system, and it just was myself and Citicorp.

And that system we wound up never really getting off the ground, but we sold it -- we sold parts of it to NASDAQ, and NASDAQ used this for their opening -- to open their markets and close it today.

It's a system that was owned by a

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separate company that I owned. And my brother was primarily the -- the main person in it. So we had that system available.

And what I did was -- was jerry-rigged that system so that we could use it as a routing mechanism to broker-dealers in Europe that theoretically could have executed this trade -- these trades the way we were going to use Morgan Stanley, Merrill Lynch and so on and on.

So the system was a legitimate system. It was used for that. But after it -- after we basically closed the system down, I took that system down for myself and used it as a -- what was going to be the mechanism to do trades, if I was doing it legitimately. And while it never got to that level.

So we -- the walkthrough of the trade would be typically -- whether we were using that system or not, we would say, look, we go out. We have a model, which was a real model that would tell us when we -- what securities we would buy, which of the 50 or 35 securities we would buy, and what prices we should bid for them, how many shares we should buy and then how many hedges we should put on and so on.

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It would -- the software would -- and it had artificial intelligence in it that would do all of this. And we would -- so we would -- when the system gave us a signal that this is the time to go into the market, because of the decision that I had made that the market looked like it was going to have a spike up, and the system said, okay, you can buy these securities at these prices in these denominations. Go into the market to do it.

Now, it would be limited to how much size you could do in that system without moving the market itself, which was another reason why we never wanted to disclose how much we were managing.

But from the walkthrough stage we would explain that what we would do is we would have this system that would give us this information, that we would go out into the marketplace and interact and buy these securities.

Once we did that, sometimes afterwards we'd call it a leg-in, we would sell the options against those transactions. And then we would have nothing to do, other than to have the trade settle. That was -- that was the walkthrough.

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It was a typical arbitrage-style transaction. A little bit more complicated than just going out and buying stock, because you also had to buy the options, and you had to buy the stocks at various levels and so on and so forth.

But we had -- we had the technology to do that, because it was well-known that we had probably the most advanced order execution technology that existed on Wall Street and were able to handle hundreds of thousands of transactions, which was why people believed -- people that understood it, you know, knowing what we could -- were capable of, doing this kind of trading was not so unusual to them.

Q. You mentioned that a certain amount of assets could be seen as indication of being able to move the market; right?

A. Right.

Q. In your mind what amount of assets would lead to that effect?

MR. REGAN: Objection.

BY MR. BLEICHMAR:

Q. Towards the end of, you know, the time where you were actually -- towards -- closer to

2008.
MR. REGAN: Objection.
Go ahead.
THE WITNESS: Well, the only -- the only amount that we actually disclosed, which was when we filed our -- in 2006, when we filed our investment advisory form, and that was a number of 16 billion.
So 16 billion was a number. Although, it was always bandied around that it was much larger than that. So the rumors were that we were managing 21 billion.
I don't think anyone ever thought it was 60 some odd billion dollars, but -- which is what it was at the end with all of the artificial profits.
But I would say that most people did not believe that it was only 16 billion, and were probably relieved when they only saw it was 16 billion, because the story was that it was, you know, in the 20's.
Which no one really had any knowledge, except one fund spoke to another. So if one fund said, well, how much is Fairfield, because those numbers were available.

BY MR. BLEICHMAR:
Q. Right.
A. So if you did a little homework, and you said, well, Fairfield says they have six billion, and Thema has four billion, and this -- Optimal has four billion, or whatever the numbers are, you could add it up. And --
But, as I say -- so -- well, we'll -- you know, the fact that we had 16 billion that we claimed, which was based upon our -- our investment advisory form, was the right number to disclose, according to our attorneys.
The -- the funds always thought it was -- they knew -- they could have known, or should have known, that it was -- it was more than that.
Q. And at the end technically, with all of the inflation, did you just say the number was closer to 60 million -- 60 billion?
A. Sixty --
MR. REGAN: Objection.
Go ahead.
THE WITNESS: Sixty billion was the amount in the accounts at the end of the demise of the firm.

BY MR. BLEICHMAR:
Q. Switching to another topic. Did -- in talking about the reporting of the trades and the fact that BMIS did the reporting, did Optimal ever ask you whether the reporting of the trades could be changed, that there would be an external reporting entity?
A. Yeah. Optimal -- Optimal, as well as other firms, wanted to -- asked if we would report the trades to them through DTC. DC -- DTC had what they called a -- it was a DTC ID system.
And a lot of the hedge funds used -- the brokers would report the trades electronically to DTC, and DTC would report it to the hedge funds.
It was -- it was -- I don't remember what year it came on stream, but certainly in the 2000's that was what was -- was being done.
Not every firm -- hedge -- you know, did it. We refused to do it, in spite of the fact that we were asked to do it. I mean, for obvious reasons.
Q. And what were those reasons?
A. The obvious reasons were we weren't

doing the trades. So we couldn't report air to DTC. So we said that, no. We're not going to do that.
And some firms balked at that, but no one withdrew their business, that we know of, because of it.
The -- it was just something that we said, look, we have our own systems. We're not going to rely upon DTC. We don't want to disclose that information to DTC.
We don't want them -- no one really trusted the -- quite frankly, no one trusted the depositories. There had been situations where people found out from DTC by favors that people would do with them, they would send the guy ball game tickets and that, would just be able to find out what each firm's long positions were or short positions were.
So this was when I was -- even when I was chairman, it was something we warned firms about doing, saying -- you know, we said, look, you're talking about a clerk, who is making $30,000 a year, all of a sudden being offered, you know, a new Mercedes to disclose what Goldman Sachs' positions were.

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I said, you know, I don't know how you -- you -- you solve that problem.

So firms -- it wasn't that unusual that we wouldn't use that system, but I guess if you add up all of the different things that we were mysterious about, it would ring alarm bells with certain firms.

Q. And why would that be?

A. Well, because, you know, it's just that it became -- you know, there were -- look, there were hedge funds that blew up. There was Bayou Capital.

There were other ones that had -- were doing similar things that I was doing that what -- that turned out to be total frauds.

And whenever -- whenever one of those things would occur and surface, I would get a ton of phone calls from my nervous clients. They'd say, you're not Bayou Capital, are you? You're not the same thing?

And I would laugh it off and say, no. When, in fact, I was.

Q. Did Optimal ever ask you if you were --

A. They all were.

Q. -- Bayou Capital?

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A. Everyone asked me that. Everyone would do that, and --

Q. Did they press you to get answers to the questions you refused to answer --

MR. REGAN: Objection.

Q. -- as a result of Bayou?

MR. REGAN: Objection.

THE WITNESS: Yeah. I mean, people -- people would ask me these questions. I would say, I'm not going to do it, or I would answer them to the best of my ability, which sometimes made sense, sometimes didn't make sense.

But with enough -- there was always enough truth to it, you know, that it was okay. Plus the fact that, you know, I had this reputation of being secretive and independent.

BY MR. BLEICHMAR:

Q. And why didn't sometimes the explanations make sense?

A. Because I was -- I was the exception, rather than the rule, as far as giving this information out.

Q. In what way were you the exception?

A. Well, the hedge fund business had changed over the years. From the handful of

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original types of hedge funds, as I said, they were very secretive and very -- gave you no disclosure, no transparency, no questions asked.

Those types of funds were -- were sort of replaced by the fund to funds, the feeder funds, as they're called, and these other big macro funds, which basically started doing business with institutional business, like pension funds and so on, which were required to get this information.

So the industry -- the original -- as I said, the original hedge fund industry was by sophisticated people, who were Europeans mostly, who were perfectly happy to not have you ask them where their money was from, whether it was legitimate money, whether it was tax money or whatever.

Because you have to understand that you're very hard pressed to find a European investor that doesn't have a Swiss bank account or money somewhere offshore for perfectly good reasons.

They -- you know, when you -- when your -- when your country is taken over and your industries are nationalized or your country goes

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to war, and you worry about all of a sudden everything disappearing, except what you can put on your back or carry in your teeth, you always -- if you make enough money, you immediately take that money, and you put it somewhere else.

So Europeans, that's their culture. That's their nature. They don't trust their governments, for very good reason. As recently, as I said, in 1980, when Mitterrand came into France.

So they don't disclose that. So if you -- and every one of them has -- has a bank account that is prohibited for them to disclose. The bank will not disclose this information, which is one of the problems the IRS has today with UBS and Credit Suisse and so on.

So you had a whole breed of investors, the original hedge fund investors, that said, look, I don't need to know anything. Don't ask me about my money, and I'm not asking you about yours and so on and so forth. And, I'm a big boy, and I'll put my money up and take my chances, and that's it.

That was replaced -- and they wouldn't

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deal with pension funds or any of those people, because the rules wouldn't allow pension funds to do it.

They have to have independent custodians. They have lots of different things. And they have all of these risk managers and due diligence people, and these guys didn't want to be bothered with that.

So it became -- people realized there's an opening here, that if -- if -- if these feeder funds can now give you all of this disclosure, they can give you this transparency, then they can capture all of this business that was up to this point not being solicited by anybody in the hedge fund field.

So, as a matter of fact, the hedge funds started to retire. Mike Steinhardt left. Julian Robertson said, I'm not -- forget it. I'm not dealing with these characters, because then the average -- then their investors started asking them for this information. They said, I'm not doing it.

So you had a whole group of Manuel types, okay, that were not decision makers, other than deciding where to put the money

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that -- their primary function was to do due diligence, to find managers and keep the managers happy and to keep their -- their investors happy.

And that was the role, and nobody wanted to rock the boat. And the more they rocked the boat, the more problems they had.

So, you know, that was -- that was typical of what went on in the business. And I was more of the old school, you know. So --

And I used to say to people, look, you know, I don't need this. I was very cavalier. If you want to do business with me, fine. If you won't do business with me, that's also okay.

And, to a certain extent, that was like -- you know, the more I said that, the more they'd want to do business with me.

Q. Did Optimal ever ask you point blank whether you were running a Ponzi scheme?

A. I don't think they -- I don't recall them saying it in those terms, but there was no question that a lot of the hedge fund clients, that's what they worried about. But they worried -- they worried about --

Q. But let's talk about, do you remember if

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Optimal ever did?

MR. REGAN: Objection.

THE WITNESS: I don't remember.

BY MR. BLEICHMAR:

Q. Okay. What did the other hedge fund clients do?

A. Well, they would -- they would ask me that, you know, with a smile. Like, you know, somebody would say, you know, you're not -- you're not a Bayou, they said, which is a hedge fund which blew up. Or, you're not -- are you really doing these trades, or -- you know, and so on and so forth.

And sometimes I would say, no, I'm not. They would laugh, and then that would be the end of it. They didn't want to believe it.

Q. Did Optimal ever ask you if BMIS had been audited by the SEC or any other regulatory agency?

A. Yes, and we were routinely. I used to get two ASD audits a year at a minimum. One was always the financial, and then we -- actually, three of them.

And then two of them were market making exams, which concentrated on our -- on our market making buying and selling.

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Then I would get an SEC audit typically every five years, which was standard throughout the industry.

Q. And was this audit on the broker-dealer side of the business or on the money management side of the business?

A. Well, it was supposed to be on both, but it was clearly because the SEC was not aware of the fact, certainly in the '90s, when it -- by the time I started doing not doing the business, then the SEC was not aware of -- or nor were the NASD of the -- well --

Q. They were not aware of what? I'm sorry.

A. They were not aware of the volumes of business that I was doing with hedge funds or clients. That became -- showed up on their radar screen, as far as I know, like in 2000.

The -- but we were doing so much other business that it wouldn't have been shocking for them -- and maybe they did know. I don't know.

Look, now, in -- you know, I keep reading that there were people, whistle blowers and that. There were inquiries and letters and all of this stuff that went on at the SEC, which they never followed up on. So I really don't know what they knew or not.

I know for a fact that in -- 2002 was the first time that I received a direct inquiry from the SEC in Washington as to what my hedge fund business was. And that was part of a hedge fund sweep that they were doing with hedge funds.

They -- they -- part of that sweep involved Fairfield, which was a big -- my biggest client. And during that -- that sweep, Lori Richards and her department, which was the -- she was the head of all -- of compliance and inspections at the SEC, became aware of the fact that I was -- she thought I had a hedge fund.

So I received a phone call from her, saying, Bernie, are you -- do you have a hedge fund?

And I said, no. I do not have a hedge fund.

And she said, because I'm being told that you have a big hedge fund.

I said, no. I execute trades for hedge funds. I have -- and I explained to her, I have a model, you know, that I use. I do trades for

hedge funds and so on and so forth.

And she said, oh, I didn't think so. So she said, well, all right. You know, we may need some more -- we may have some more questions for you after the first of the year, because we're -- we noticed your name come up on some of these hedge fund sweeps that we're doing, and we just want to try and understand what it was.

And it related to this whether or not I was being an advisor to a hedge fund and so on. So after the first of the year, she sent me a list of all sorts of information she wanted, documents as to who are my hedge fund clients at that time, what the strategy was, because she was -- they were concerned about front running.

Front running is a practice where market makers or proprietary traders become aware of a large order that an institutional client or a hedge fund has, and they run ahead of that order, which is illegal to do that.

So she was concerned that maybe we were front running, which she couldn't believe, because of my reputation with her.

But I said, fine. I'll send you the

information. So we shipped down to Washington -- I don't know how many trans files. Probably 50 trans files of documents, trading runs and so on.

And it all had to do with my market making business at that time.

Q. Not your money management?

A. Well, it did both, but I mean the volume of trading was on my market making side. So when she looked at -- when she looked at this information, it was obvious that I wasn't running in front of any orders, because we weren't.

You know, first of all, we weren't executing the trades for the hedge fund clients at this time. It was 2002. So the trading that she saw was part of my market making business. So she looked at that.

And even when -- when I was doing the legitimate business, we never ran ahead, because we -- we operated from a different floor, different traders and so on in the systems.

So, you know, up until '92, when we were doing this type of trading, it was perfectly legitimate trading. No front running or

anything.

So they didn't go back that far anyhow. They only wanted -- they went back, I guess, maybe a year or two. So they saw that. It was fine, and nothing came of it. That was the end of it.

It was at a later date, at a subsequent investigation involving another group of hedge funds, that the investment advisor issue came up. And that was, as I say, in 2000 -- 2006.

So there was -- all broker-dealers were involved in inspections, and we -- in 50 years I think we've had two violations that showed up in inspections, and they were minor things. From a fine of $500 for volume reporting. Which was probably one of the cleanest records that existed in Wall Street.

Q. Was it your impression that you were able to conceal the illegitimate business from the SEC in part by putting forward the broker-dealer side of the business?

A. No. I think that the broker-dealer side of the business most people would understand was separate. We -- we made that very clear to the client. That was a question that every -- every hedge fund asked us.

They wanted to know, because the -- the original stories going around, Switzerland particularly, was the reason Bernie can do these trades was because he has this huge amount of order flow available from the market making side, and he must be front running the orders. That was it.

Q. When you say, "Switzerland," what are you referring to?

A. Because the hedge fund -- the Swiss hedge funds were the ones that started this rumor. Now --

Q. By that are you including Optimal in that?

A. All of them. I mean, you know, I would say -- look, you have to understand, the Swiss, by their very nature, are always very suspicious, okay, because everything they do is secretive and deceptive, you know.

The -- what -- to a certain extent they loved that theory, you know. This -- because this front running was not illegal in Switzerland. So this now -- and I -- I saw -- I saw humor in this.

It was like, ah, now I know how you can

do this. Before we couldn't figure out how you could do things that nobody else could do, you know.

Why can't Merrill Lynch do this, and this one do this, and this one do this? But Bernie Madoff has more business than anybody, because he has all of this market making business, which gets him great information, and so he must be front running.

Q. Did that make sense to you?

A. It did, except it wasn't true. And it was illegal in the United States. It wasn't illegal in Switzerland.

There was -- to them it was, you know, like having a Swiss bank account. It was, you know, you know, of course -- of course, we -- we front run. Of course, we have, you know, dirty money.

So this was like -- this -- this was -- they finally -- you know, the light bulbs went off, and they said, God, this is okay. We don't mind dealing with a guy who is doing it. Now it makes sense.

And they -- but there was some that said, well, this is illegal. The smarter ones

would tell -- eventually they would get to their general counsel, and would say, we found out how Bernie is able to do this. He's front running all of these orders.

The general counsel, you know, would hopefully say, that's illegal. He can't do that.

So then they -- they had this -- this tug of war. Well, do we -- what -- what happens if the SEC shuts him down, because he's doing this illegal stuff?

And some of them -- I read this subsequently in some of the e-mails. They said, all right. He shuts them down. He'll give us the money back.

This is better than not doing the trades in their mind, you know. You know, they'll say, you can't do this anymore, return the money, and that's the end of it.

All right. So I would say, I -- you know, they all -- almost every fund would, you know, have another meeting with me and say, well, okay. So you're front running, or, are you front running?

And I'd say, I'm not front running. I'd

say, I can't. It's illegal.

And they're saying, well, how could a market maker be doing both businesses? That was their big thing. The Swiss, you know, that was their big thing. The market maker can't be.

And I would say -- and I guess the spearheading of that was Thema and, you know, Kingate. They -- they were the ones who were focusing in on that, and probably Optimal as well.

And I said, look, there is nothing wrong with a market maker, you know, running an investment management business, which they were convinced we couldn't do.

And I said, don't be ridiculous. I said, every major bank and brokerage firm has money management and also has market making operations and proprietary operations. And as long as they keep them separate and they have Chinese wall procedures, they're fine.

Well, most of them, you know, had the ability to check this out by calling the regulators or their own general counsels, and, yeah, that's right. They can do that. Then they -- Goldman had it. Merrill Lynch had it, and everybody else had it.

So, now, okay. Bernie, as long as he does -- follows the rules, it's okay. But he still has all of this order flow. So he must be getting these great signals.

And we would say, yeah, the market making gives us the signals, you know, about the market in general, but that's perfectly legal. You just can't buy against individual orders.

So then all of a sudden there was this merger mania going on. Everybody woke up and said, the market making business was a great business.

Because you have to understand that the average return on capital in the market making and special business for most of the years in the industry was 36 percent return on capital. That's what people made.

It was a gold mine. Us included. You know, we never -- our returns were never that high, because we basically were involved in arbitrage and hedging, which was less risky, but we certainly always made in excess of 20, you know, 25 percent return on capital.

So this became a very attractive

business. And I think that probably started in 2002, there was this merger frenzy. And --

So all of a sudden the hedge funds that were suspicious about this front running or this issue of having a market making, which was a conflict of interest with the money management, said, wait a minute. This is obviously okay.

Because Goldman was buying Spear Leeds, which was one of my biggest competitors, you know. Merrill Lynch bought Herzog, another big competitor.

And people were trying to buy us. Smith Barney and Morgan Stanley both were offering us, you know, two to three billion dollars to buy our -- our operation.

Part of it was they thought we also had this money management side, but they -- the market making side was what they were interested in.

Now, I couldn't -- my sons -- that became a big issue with my sons and brother, because my sons wanted me to sell. They -- you know, they said, two, three billion dollars? Let's take it and go home, you know.

Because the market making business at

that time, because of decimalization, was over, but nobody realized that. It was as obvious as the nose on your face.

And it was certainly obvious to us, because we were involved in decimalization at the very beginning. We knew that the spreads were going to close and be different. And --

So my sons, who ran the market making business, said, let's sell. My brother refused to, because that was his baby. He didn't want to sell that.

I didn't want to sell, because it was like the Emperor's New Clothes. How was I going to be able to do the due diligence?

And in spite of the fact that Morgan -- that Sandy Weil and Bart Rubin, from Smith Barney, said, listen, how can you turn down two, three billion? Just meet with us at least, you know.

I knew that I couldn't open my books up to them. As much as they liked me, as nice a reputation as I had, they weren't going to give me a check for two or three billion dollars.

Q. Why couldn't you open up your books to them?

A. Because they would have -- they would have seen that I wasn't doing the trades and the money management side of the business.

Q. And why would they have been able to see that, as opposed to an investor in a -- from a hedge fund?

A. Well, they would have sent a team of auditors in there that knew what they were doing, and they would have -- you know, they would have wanted to see the -- the business on the market -- on not only the market making, because one of the big attractions was also the investment management side. So --

Because they -- not only that, but they said to me was, look, give back all of your money from hedge funds. You know, we'll give you all of the money you need. You don't need money from them.

Get rid of these guys. They're all a pain in the ass; right? You always say you don't like hedge funds. Return all of the money.

Merrill Lynch will do -- because Merrill Lynch was already to the point of also hammering on my door to give me money to manage as well.

They all had internal hedge funds.

So there was this -- I couldn't admit to my sons or my brother that I had this fraud going on. It was a very uncomfortable situation for me.

And I just said, look, I'm not selling out to anybody. I don't want partners. I never had any partners. I'm just not doing it. And that was it.

And that led to a lot of arguments internally from my sons, who said -- because they couldn't figure it out. They said -- as a matter of fact, their response was, look, Dad, you're, you know, 70 years old.

You love your boat. Go on your boat. Cruise the Mediterranean with Mom. We'll manage -- you know, we'll each take a billion dollars, and we'll manage it privately ourselves.

Don't deal with customers. Don't deal with hedge funds. Don't deal with nothing, you know.

That was -- and it made sense, you know.

My wife didn't want to side between one or the other.

And I just said, I'm not doing it. And, again, you know, my personality was such that everybody accepted that I was a pain in the ass and hard to deal with. And that was that.

So I'm not sure that I -- I remember the question you originally asked me.

Q. Well, let me ask this question: Where -- where would the auditors or the team of auditors that you said, for example, Smith Barney, would have sent in found in your books that, you know, you were running a fraud?

A. They would see that I don't have the securities. I mean, it wasn't that complicated.

Q. Where would they see that?

A. Well, they typically would have, you know, wanted to confirm with the DTC, if you're doing a full-blown audit. The same thing the SEC failed to do or the NASD.

They never -- they never -- even when I asked -- when they asked me in 2006, where are these securities held? By then they had already been suspicious, and they had gotten some tips from people that I was running a Ponzi scheme.

Q. And who were -- who were the auditors at BMIS?

A. Friehling & Horowitz, which was basically David Friehling.

Q. And they ran an audit at BMIS; correct?

A. Yeah, but they had no idea -- they ran BMIS, and they also ran an audit of the investment management side. But they also never -- never followed through with the depository.

There's a -- look, there's a basic auditing practice with any audit, regardless of whether you're making, you know, basketballs or whether you're buying stock.

When you do an audit, you do an inventory audit, and you check the inventory. Whether it means counting bolts of clothing on a shelf or basketballs or whether it's securities, getting an independent audit.

If the securities aren't physically in the location, in your vault, they have to be somewhere, and you would check and get that.

Q. Did Friehling & Horowitz not do an inventory?

A. They didn't do it. They failed to do it also, because they had -- they looked at -- we had -- by that time we had records of --

falsified records of the depository.

It's hard for me to acknowledge all of this now, but it doesn't matter.

Q. So Friehling & Horowitz never went to DTC independently and --

A. No.

Q. -- and cross-referenced the records you gave them?

A. Which is why -- which is why they have a problem. Yes. They never -- they never did an independent audit with DTC.

Q. Do you have an understanding as to why they didn't do that?

A. There was nothing -- there was nothing -- they were never told not to do it. It was -- they believed when they looked at our stock record it showed it at DTC.

And at some point we had actually reproduced DTC information. And a real audit, an important, thorough audit would have been to confirm directly.

Which, as you're seeing now in this latest thing that happened with this Peregrine Capital, with the clearing corporation, nobody did that. Nobody -- nobody got an audit.

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He -- he created his own statements, and they sent to -- the accountant sent them to a post office box number.

You really couldn't do that with DTC, because it was just impractical. But people did that with Bayou. They did that with Bear Stearns. They reproduced Bear Stearns' statements.

People have been doing that since the beginning of time. I mean --

Q. Falsifying records?

A. Yeah. I mean it happens with -- with the biggest banks, you know. With the one with Barings, and it was the same thing.

These guys get involved -- they get somebody in the back office that they go into cahoots with, and they produce records. I mean, you know, it's -- it's -- it's the way it is.

Q. Are you familiar with the term big four when you refer to accounting firms?

A. Yeah.

Q. And who are the big four?

A. That would basically be Coopers and -- it used to be big five before Arthur Andersen was put out of business, but it was -- you know,

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PricewaterhouseCoopers was one. Ernst & Young was another one. Deloitte was another one. I don't remember the other three.

Q. Did any of the big four ever come and conduct an audit of BMIS?

A. Yeah. HSBC sent in -- that was the auditor for the new audit in London of me.

Q. KPMG?

A. KPMG. KPMG was the other one, the fourth audit. Yeah, KP -- I got a call from HSBC, who was the custodian for a lot of the funds, saying that part of their due diligence was they're required to do an independent audit, which, quite frankly, was not true.

It was unusual. I checked with other firms, like Bear Stearns and Merrill Lynch, and said they would never let another auditing firm come in and audit their books. They said --

Q. When you said, "another auditing firm," you mean --

A. Other than their own.

Q. -- a firm that is not their own; right?

A. They would never -- they would never have an -- an outside auditing firm come in, other than their own auditor, to audit their

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books.

I had checked with my friends, who were officers at -- the treasurer of Bear Stearns. They said, are you kidding me? They said, we would never let another -- if we have a client that insists upon that, we'd say, close your account.

Now, they had the advantage that they weren't using Friehling & Horowitz. Those firms were using one of the big four firms. So they had enough credibility that they didn't need to be checked.

But since I didn't have that, HSBC said, well, you know, this is what we require. So my back was to the wall on that. And I said, okay. Send them in.

So HSBC came in twice over a period of two years and spent a couple of weeks each time, doing a complete audit of the investment advisory business.

Q. Did that audit independently confirm with DTC the existence of the securities?

A. No.

Q. And how did it not -- how did they not do that?

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A. Because they couldn't do that without my permission. DTC wouldn't do it.

Q. And did you refuse to give them your permission?

A. They never asked.

Q. Why was your back to the wall?

A. Well, because they made it clear that they had no choice, but they -- and they had too many clients. So if they all of a sudden said, look, you know, we're going to have to -- they represented, you know, Thema or Kingate. They had a lot of clients. So I had no choice but to let them come in.

Q. And they did an audit of the investment -- the money management side of the business?

A. Yeah. They did a complete audit for two weeks. They did everything, and they -- they confirmed the custody issue by reviewing the stock record.

And I believe the second time they came they looked at -- they had -- we had produced DTC records. Meaning people in my office. Frank Dipascali produced DTC records for them.

But they never did what they should have done, which was directly contact DTC. Which

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they could have done, if I gave them permission.
Q. But they never asked?
A. They never asked to do that.
Q. Did any -- did anybody ever ask you to give them permission to independently confirm with DTC?
A. No.
Q. Nobody ever did?
A. No.
Q. Optimal never asked you that?
A. No.
Q. Let me --
MR. REGAN: Javier, let's give --
MR. BLEICHMAR: Yeah.
MR. REGAN: Can we just take a quick break?
MR. BLEICHMAR: Yeah. We can take a quick break.
MR. REGAN: Yeah, stretch and --
MR. BLEICHMAR: Let's go off the record.
(RECESS FROM 11:41 A.M. TO 11:55 P.M.)
BY MR. BLEICHMAR:
Q. Let me show you an article -- I'm not going to mark as an exhibit -- that was printed in the New York Times.
MR. REGAN: Did you say you're not going to mark this?

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MR. BLEICHMAR: I'm not going to mark it as an exhibit.
MR. REGAN: Okay.
MR. BLEICHMAR: I'm just going to use it to refresh his recollection.
BY MR. BLEICHMAR:
Q. That is -- it states that it's February 15, 2011, "From Prison, Madoff Says, Banks Had to Know of Fraud," by Diana Henriques. Did you give an interview taken by Diana Henriques?
A. Yes.
Q. And does -- did you read this article at the time?
A. She wrote --
MR. REGAN: I'm sorry. Did you say, "did you read this article" --
MR. BLEICHMAR: Yeah.
MR. REGAN: -- "at the time"?
THE WITNESS: Yeah, yeah. I -- yeah. I -- I read this. I read it in her book, I guess.
BY MR. BLEICHMAR:
Q. And just, very briefly, who is Diana Henriques?
A. She's a -- was a writer for the New York Times, and she wrote a book about my case, and

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she interviewed me a couple of times.
Q. She interviewed you here?
A. Here. Yes.
Q. So after 2008?
A. Yeah.
Q. I'm going to go to the third paragraph from the top. See where it says, "but during a private two-hour interview"? It's the third paragraph.
A. Right.
Q. Yeah.
And on the second line it says, quote, "He asserted that unidentified banks and hedge funds were somehow complicit in his elaborate fraud."
Do you -- let me just first establish, do you remember giving that interview and saying that?
A. Yes, I do.
Q. Okay. And what did you mean by unidentified banks and hedge funds were somehow complicit?
A. Well, I felt that they -- they were -- they lacked to do the proper due diligence that they should have done, you know, to -- to discover whether or not there was a fraud involved.
And basically it was all of the things

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that I've discussed, you know, here, that now -- you know, whether or not -- I guess this sort of relates to what, you know, should have known, as opposed to actually knowing.
I have no way of knowing that a bank actually knew that I was committing a fraud. You know, no one asked me, are you committing a fraud? And I said, yes.
And I thought that they believed me, you know. If I said, yes, it was, you know, in an offhanded way, as a joke, you know. So --
But I felt that -- that certain of these people just -- you know, had they been doing the job properly, would have -- should have known that something was wrong.
Q. Would you include Optimal in -- in that --
A. Yeah.
Q. -- subset of people?
A. Uh-huh.
Q. Is that a, yes?
A. Yes.
MR. REGAN: Objection.
BY MR. BLEICHMAR:
Q. Let me move on to what's the sixth paragraph. The one that starts, "In many ways,

however." Do you see that?
It says -- the second sentence in that paragraph says, quote, "He spoke with great intensity and fluency about his dealings with various banks and hedge funds, pointing to their willful blindness and their failure to examine discrepancies between his regulatory filings and other information available to them," end quote.
Do you see that?
A. Okay. Yeah.
Q. Did you say that?
A. Yes.
Q. And what did you mean by that?
A. Well, the regulatory filings -- there were -- there were two regulatory filings that were important.
First of all, there was what they call -- I can't remember. Investment managers are required to file quarterly the assets that they have.
Q. Is that the ATV form?
A. No. That they have under management. It -- it meant -- it's position reporting.
Q. 13-F?
A. 13-F. Right. 13-F filings, which

disclose the positions that you have.
Now, we, in order to conceal that -- well, it wasn't in order to conceal that. I shouldn't -- I should not say that.
The -- the strategy that we employed always went into treasuries at the end of a quarter. That was part of the strategy, because the options were usually 90-day options.
And most of the hedge funds liked the idea that we would be liquid at the end of a particular quarter. It was basically a way of showing that there was liquidity in the marketplace and so on.
And that was the way the strategy was originally designed, when it was a legitimate strategy.
So even when it became illegitimate, we carried that forward. So that because we were always in treasuries at the end of a quarter, a reporting quarter, there would be no positions to -- to report.
But that was -- that was an unusual procedure.
Q. Why was it unusual?
A. Well, because probably no other hedge

fund, that I'm aware of, had that strategy.
But, by the same token, there were very few other hedge funds that did what we did. You know, that used this particular strategy. And there was some -- there was some confusion as to what you were required to report.
I can't remember what the confusion was. But as a market maker you -- there were certain exemptions, but we clearly would not be -- I don't believe that we would have been exempt.
So that was one thing that, to me, was somewhat unusual.
Again, you know, it depends upon -- you sort of have to -- in my mind I felt, as a matter of what -- when you say, "willful blindness," people believe what they want to believe.
And if you don't connect the dots -- look, I always had a theory that I used to say -- and it's not only my theory. If you don't understand a strategy or you don't understand a business, you don't go into it.
Because there is nothing that complicated about the stockmarket. In spite of the fact that everybody tries to make it seem as

though it's very mysterious and very complicated, there's no rocket science.
So if you don't understand something, there's a reason why you don't understand something, you know.
Q. Did you feel that the hedge fund investors did not understand what you were doing?
A. I thought they didn't want to understand. I thought that was --
Q. And what --
A. -- willful blindness.
Q. What gave you that impression?
A. Because they never -- they never really objected. There was -- it was always sort of a passive, you know, well, I wish you would tell me this, but, okay. You're not going to.
Q. And you're including Optimal in this subset?
A. Yeah.
Q. Moving on to the paragraph below, which says, quote, "They had to know," end quote, "Mr. Madoff said," quote, "but the attitude was sort of, if you're doing something wrong, we don't want to know," end quote.
Do you remember saying that?

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A. Yeah.
Q. You said that?
A. Uh-huh.
Q. And what did you mean by that?
A. What I just said, that they basically -- I believe that they couldn't resist the profits that were being generated from them.
They were -- there was the hedge funds. It was my own clients, you know. The individual clients, the same thing.
I mean, they just -- it's -- the greed overtakes them, and they just -- they just didn't want to know.
Q. And this included Optimal?
A. This included Optimal.
MR. BLEICHMAR: Let me switch gears. I'm going to mark this as Exhibit 1.
(PLAINTIFFS' EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.)
BY MR. BLEICHMAR:
Q. I've marked as Exhibit 1 what is entitled, "Board of Directors of Banco Santander, London, November 21, 2011."
Do you see, Mr. Madoff, that there's a picture of the board of directors in this page?

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A. Uh-huh.
Q. Do you see that there is -- there's only one woman in that picture?
A. Yeah.
Q. Do you recognize who that is?
A. Yes.
Q. And who is that?
A. I believe she's the granddaughter of the founder of the bank.
Q. And what is her name?
A. Well, I'd have to look at it to tell you. I don't remember her name. She --
Q. Let me ask it a different way. Do you -- have you ever met with the individual who is in this picture?
A. Yes.
Q. Okay. And do you remember her name?
MR. REGAN: Objection. Asked and answered.
THE WITNESS: No.
BY MR. BLEICHMAR:
Q. Okay. Below, it says, "Director, Ms. Ana Patricia Botin-Sanz;" do you see that?
A. Yeah.
Q. Does that refresh your recollection of whether you met with her?

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A. That sounds familiar.
Q. Okay.
A. I met with her and her husband.
Q. And when did that happen approximately?
A. Oh, sometime in 2008, I believe. Maybe -- I met with her twice.
Q. Let's start with the first time. So you met with Ana Patricia Botin and her husband?
A. Uh-huh.
Q. An how do you know it was her husband?
A. She told me.
Q. And do you remember his name?
A. No.
Q. If I told you that his name is Guillermo Morenes, would that refresh your recollection?
A. All of these Spanish names sound the same to me.
Q. But you knew it was her husband?
A. Yeah.
Q. And when did the first meeting take place more or less?
A. Up in my office. I don't remember the timeframe. The first time she came up -- I believe the first time she came up she came up with -- with him. She came up again once after

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that herself, though. I believe it was only twice.
Q. And let's just remain focused on the first meeting with Ms. Botin and her husband. What were -- what was the purpose of that meeting?
A. She just wanted to meet me, and she seemed very knowledgeable. I was very impressed with her.
Not so much knowledgeable necessarily in the strategy, but knowledgeable about the bank and -- I mean, she had an important position at the bank at the time.
So, you know, I knew she -- she was someone of -- of importance and -- you know, and she just seemed very sharp and very, you know, knowledgeable.
Q. And was the discussion in English?
A. Yes. No, she spoke perfect English. So did her husband.
Q. And you said this meeting took place in your offices?
A. Yeah.
Q. This is your office in the Lipstick Building?
A. Yeah, in my conference room.

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Q. Was that on the 19th floor or on the 17th floor?
A. 19th floor. I always met with clients on the 19th floor.
Q. And more or less how long did the meeting last?
A. Probably an hour.
Q. And who else was there?
A. Her husband.
Q. Nobody else?
A. No.
Q. Just the three of you?
A. Right.
Q. And how did the meeting come about?
A. I guess I must have -- typically I would get a call from Manuel to say that she was -- you know, that mostly that she's in New York for some business, and she would like to come up and meet me.
And I said -- and he would tell me, you know, who she was. And I would say, fine.
I mean, she was -- obviously, you would say, she was an important person at the bank. So, you know, I wouldn't -- wouldn't object to meeting her.

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And we discussed, you know, I guess, the strategy. You know, it was awhile ago. So I don't remember. We must have discussed the strategy and just discussed the market.
We spent more time discussing the market in general and what was going on in the industry.
Q. Anything specifically about the strategy that you discussed that you remember?
A. Nothing unusual, you know. It basically would have been sort of the same explanation that I give everybody about how the strategy worked and what the advantages were, so on.
Q. And did you say this meeting took place approximately in 2008?
A. I don't know. It might have been -- there was one meeting that was later, that was close to the end. So the first meeting could have been 2007. I don't recall.
Q. Anything else you remember about that -- the discussion in that meeting?
A. Nothing unusual.
Q. Was there any subsequent followup or -- that arose --
A. No.

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Q. -- as a result of that meeting?
A. No, other than she came once -- once -- you know, an additional time. And at that meeting the discussion primarily centered around the difficulties in the banking industry itself.
She spent a lot of time --
Q. This is the second meeting?
A. Yeah.
-- telling me about what a sad state the Spanish banks were in, which, you know, I had no clue at that time how true it was.
But it was a general meeting, you know. Sort of at that -- it was almost like a social meeting at that meeting.
Well, the first meeting was actually -- she invited me to come while -- it was during the America's Cup, actually, that meeting, because I remember --
Q. The first meeting?
A. I think the first meeting. Because she said, why don't you come -- you know, we're one of the sponsors for the America's Cup, and you can watch the boat -- watch the race on our boat.
And I said, well, at that time I'm

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usually in the South of France and on my own boat.
And I just really didn't want to -- didn't want to go. So I thanked her, and that was it.
So that -- I remember that was during the -- it must have been during the summer, during the America's Cup race.
Q. Why didn't you want to go?
A. I -- for the most part I really tried not to socialize with any of my clients. It was -- first of all, it was hard enough for me, putting on this sort of charade, you know, when I had to. The last thing I wanted to do was -- was develop a social relationship with them.
And as much as I would have liked to go to the America's Cup race, it was just not something that I really would want to do.
And I -- I didn't do that -- I really had no social relationship with any of my clients for the same reason.
Q. Was this invitation to go to Spain to the America's Cup?
A. I believe it was in Spain. Yeah.
Q. Focusing on the second meeting. You

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mentioned that it was -- entailed a discussion of the banking industry in Spain. Did that meeting -- did you say it also took place in your offices?
A. Yeah.
Q. And was it just the two of you?
A. Yes.
Q. And how long did that meeting last?
A. Probably similar; an hour. That's usually how long my meetings would take.
Q. And how did that meeting, the second meeting, come about?
A. I believe -- again, the same as the first. Either she called me or Manuel called me or Jonathan Clark called me.
Q. You didn't -- you didn't use e-mail; correct?
A. No.
Q. And was there any specific purpose for the second meeting with Ms. Botin?
A. Not that I'm aware of.
Q. And approximately when did it happen, to the best of your recollection?
A. It was sometime in 2008.
Q. Do you know if it was in the -- in the summer of 2008?

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A. No. I can't remember.
Q. Do you remember if it was after -- or before Bear Stearns collapsed?
A. I don't -- I don't recall.
Q. Anything else you remember about the second meeting with Ms. Botin?
A. No.
Q. You discussed -- do you remember discussing the -- the split-strike conversion strategy again?
MR. REGAN: Objection.
You can answer.
THE WITNESS: I don't recall.
BY MR. BLEICHMAR:
Q. What was your impression of Mr. Morenes, or Mrs. Botin's husband, at the first meeting?
A. He was -- I believe either had his own fund or was a professional. I don't -- I don't think he was related to the bank so much, but he was some sort of a money manager or a fund manager or a head -- some -- some -- I believe, something like that. That's my recollection.
Q. And what was your impression of him, in terms of -- you said that you were very impressed by Mrs. Botin.
A. He was -- you know, he was sort of --

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didn't really say that much. He was pretty much in the background.
He was -- it was clearly -- she was, you know -- she was sort of in charge of -- I mean, she would -- you know, I don't know that he -- I don't recall that he was related to the bank in any way or Optimal in any way.
So he was sort of there with her, as they were both in New York at the same time. He wanted to meet me as well, but it wasn't any -- he didn't solicit doing business with me directly or anything else like that.
So he seemed, you know, very -- you know, an elegant guy and intelligent and very polite.
Q. Did Manuel Echeverria call you after the meeting and ask you what had happened at the meeting?
A. He might have, you know. He might have, you know. I mean, typically he would -- he -- he would, you know, stay in touch with me periodically and tell me that the meeting went well or didn't go -- I mean, it never didn't go well.
So he would usually call me up and thank

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me for, you know, seeing these people, and, you know, having the meeting and so on.
Q. Let me go back to Exhibit 1 and to the picture. Have you met or do you recognize anyone else in this picture that you believe you have met with?
A. This fellow here seems -- looks familiar to me.
Q. And, for the record, are you pointing to the fellow to the right of Ms. Botin?
A. Yes.
Q. And -- and why does he seem familiar?
A. He just looks familiar to me. I -- I thought I possibly met with him at one of the meetings.
Q. Do you see that below his name, at least in the picture, he's identified as Mr. Rodrigo Echenique Gordillo?
A. Yes.
Q. Does that refresh your recollection as to whether you met with him?
A. No.
Q. Okay. Anybody else in the picture that you recognize --
A. Well --

Q. -- that you --
A. I --
Q. -- have met with?
A. On Thanksgiving of 2008 I met with one of the directors of the bank. He came up and -- he came up with a group of people.
Q. Uh-huh.
A. I don't see him here. At least -- you know, it -- I don't recognize him from this picture, but he was -- I remember that at that meeting -- and he came up with a younger fellow, who was actually, I believe, took the place of Manuel.
Q. Does the name Mr. Esteban Estevez --
A. I think so.
Q. Okay.
A. He was a handsome, young guy.
Q. I'll represent to you that Mr. Estevez --
A. Okay.
Q. -- replaced Mr. Echeverria.
A. Right.
Q. I can also represent if -- if it -- if it refreshes your recollection, that our understanding is that it was Mr. Echenique who was present at the Thanksgiving day meeting.

The picture may be different than the one --
A. Echenique.
MR. REGAN: Objection.
Go ahead.
I thought that you were going to represent that he was handsome.
THE WITNESS: Okay. I can't remember any of these guys, but I think at that meeting there were three or four people.
BY MR. BLEICHMAR:
Q. Okay.
A. It was an unusual meeting, because it took place on Thanksgiving. My office was closed. It was a meeting that was -- had been delayed, canceled a number of times, because his plans changed of being in New York, this one director.
And the purpose of that meeting was that -- there was something about they were -- leverage that they were -- I think it was -- it was --
I was led to believe that this -- there was something coming up at the board meeting at the bank, and that he was an important person

for me to meet, you know, to do some due diligence or, you know, to meet me.
Not that he did any due diligence, quite frankly, other than what everybody else does, just meet me.
But there was some -- my recollection was that someone said it was important for me to meet him, because he's in charge of this issue, whether there was going to be some sort of a vote as to whether to expand the business or something of that sort.
But at that time it was -- there was sort of -- a lot of changes taking place in the bank. There was -- there was a rumor that they were going to be taken over, they were going to merge, they were going to get rid of -- or they were going to get rid of their money management position or --
You know, there was all sorts of stuff that started basically when Manuel left, but everybody assured me that nothing was going to change.
So they wanted me to meet with this -- with this fellow, and I said, fine.
Q. So your understanding was that there was --

I don't know how you put it, but there was something going on with -- at the -- on the board with respect to investment?
A. I thought there was --
MR. REGAN: Objection.
You can answer.
THE WITNESS: I thought that -- my recollection was that there was -- it was important for me to meet him as a board member, because, you know, there was some decision, you know, as to maybe whether to expand the amount of money that I had with them or not.
That's all I -- that is just, you know, a feeling I had.
BY MR. BLEICHMAR:
Q. And when did you -- what was discussed at that meeting, at the Thanksgiving 2008 meeting?
A. The same as discussed at every meeting. Sort of a replay of -- at that time the markets were in turmoil in general. There were redemptions sort of flowing around the whole industry.
The industry was in a -- the whole hedge fund industry, as well as the market, was sort of in -- in turmoil. So it was really sort of a

hold -- hold-your-hand type of a -- of a meeting.

Q. Did they -- did anyone from Optimal request to withdraw funds?

A. Yeah. I mean -- well, not at that particular meeting, but I'm not sure -- there was already -- prior to the meeting there was -- there were withdrawals of funds, and there was a -- a schedule of additional monies that were going to come out.

Q. So prior to the meeting Optimal had requested that --

A. I believe so.

Q. -- to withdraw some money?

A. Part of the -- my recollection was that there were monies already being withdrawn, and there were more monies to be withdrawn, you know, after the meeting.

Q. Do you remember the amounts?

A. They were large amounts. I mean, there was a couple hundred million dollars. There may have been 250 million at one shot.

There may have been another 50 or 200 that actually never was withdrawn at the end, because I went out of business. So --

Q. So did Optimal's request to withdraw funds in November of 2008 contribute to the demise of BMIS?

A. Yes.

Q. In what sense?

A. Well, at that time I was getting withdrawals from everyone. With -- I mean, there was a liquidity issue coming in -- going on in the hedge fund industry, and everybody was withdrawing money.

And because I was one of the few hedge funds that didn't have any restrictions of withdrawals -- you know, there wasn't particular dates they could sort of withdraw the money on demand, which was one of the big attractions of these hedge funds.

There was no 30-day notice or anything of that sort. Which was typical. Usually there was a timeframe that you couldn't -- you had to withdraw money at the end of a quarter or so on. With me, there wasn't.

It was sort of like the -- they could -- can withdraw, and did withdraw, you know, at any given time, with no notice, other than, you know, three days settlement type of notice.

Q. At the Thanksgiving 2008 meeting did you try to dissuade Optimal from making the last redemption?

A. Well, I believe that at that time I already told them that if they withdrew money, I wasn't going to take it back. I --

That was a time that I was -- I knew that I wasn't going to be able to meet all of these liquidity withdrawals, or I chose not to.

I mean, I had the ability to take in additional monies, if I wanted to. I had -- at the end had commitments from the Pritzker family of Chicago for hundreds of millions of dollars.

I had -- Picower was going to contribute 250 million. Shapiro was going to put money in, because they basically owed me the money that they had sort of guaranteed me from the losses that I had taken.

But by that time I was burned out. I mean, I realized that I just couldn't continue this. It was just too much for me.

And I just felt guilty about taking money from new clients, who I had never made any profits for, other than Picower and so on.

But I had a couple of other hedge funds

that were new clients that could. So I -- I -- I had the ability to take an additional billion dollars that would have kept me -- that would have covered all of my redemptions, including Banco Santander, but at that stage, mentally I just couldn't.

I just -- I couldn't handle it any longer. So I just said, you know, I'm not -- I'm just not going to continue. And --

So I tried to delay -- discourage people from taking money out, like Fairfield and -- but they were all in a position where they -- they had -- they were getting redemptions from their clients, and they had no choice.

So I realized that, and that was the end.

So, yeah, I probably said to Optimal, look, if you take money out -- because that was the only threat that I had, was to say, you're not coming back.

Because what they all did was say, I'm taking money out temporarily, but I'll be back, you know, as soon as I get the money from these other funds, which I can't withdraw until the, you know, 30 days. But as soon as I get that

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money back, I'm going to re-liquify you.
And I realized that I just -- it was going to be too late, you know.
Q. How long did this meeting last?
A. Two hours at the most.
Q. Two hours.
Did they ask you about the counterparties?
A. My guess would be, yes, but I don't really -- I can't say for sure.
Q. Do you remember anything else specifically about the meeting?
A. No. I thought the meeting went well. I mean, you know, there was no -- I never -- I didn't feel any --
But, look, you know, everybody was great actors, including myself. So it's hard to -- hard to determine whether they -- what they thought.
I -- I had the opinion that they had no choice, that they -- they had to cover these redemptions from their clients.
And they also said they were going to replace them, but it was -- other than that, there was no difference in that meeting.
Q. You mentioned that Manuel Echeverria had

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been replaced; correct?
A. Yeah.
Q. And that Manuel Echeverria had left; is that right?
A. Right.
Q. What is your understanding of that?
A. The way it was explained to me was that -- by him --
Q. By Mr. Echeverria?
A. Yeah.
-- was that the bank was changing their compensation arrangement with him, and that was not acceptable to him. They were changing it, because there was something internal being done at the bank with, you know, how they were going to handle things.
And he -- either he wanted an equity -- he wanted a percentage, or something, of the return, and they just weren't going to give it to him. So he left and went to Notz Stucki, I guess it was.
Q. Do you recognize the individual all of the way to the right of the picture, the one who is identified as the chairman, Mr. Emilio Botin?
A. Well, yeah. I mean, it's funny. You

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know, I see his picture in the newspaper all of the time. So -- as chairman of the bank.
You know, I -- I thought I had met him at one point in time, but, you know, I don't know. I don't know whether it was just because I've seen his picture or not.
As I say, a lot of times they -- people come up to meetings with me, and I never knew really who they were.
Q. You don't have any specific recollection one way or the other?
A. No.
MR. BLEICHMAR: Okay.
(DISCUSSION HELD OFF THE RECORD.)
BY MR. BLEICHMAR:
Q. Do you recognize the individual in this picture?
A. (INDICATING.)
Q. No?
A. He looks like a drug dealer. I don't know.
Q. We won't identify it, for the record.
A. Not that I've ever met anyway. No.
Q. Let me switch gears a little bit. You and I have met before; correct?

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A. Yes.
Q. And when we've met, who else has been present?
A. Alan.
Q. Mr. Alan Ellman?
A. Yeah.
Q. And can you describe how you and I first came into contact?
A. You sent me a letter, stating that you wanted to come up and meet with me about -- you were representing some clients in a potential action against Optimal and the bank, I guess it was, and wanted to know whether I would be willing to -- to meet with you. And, you know, I said, yes.
Q. And how did you say, yes? How did you contact me?
A. I either e-mailed you or called you up.
Q. So we have exchanged telephone conversations and e-mails; correct?
A. Correct.
Q. How many times have we met?
A. I believe this is the third time.
Q. And approximately for how long have we met in the past?

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A. Typically about two hours.
Q. And generally what did we discuss?
A. Pretty much a similar conversation to what we've been having this morning.
Q. Anything that you think that we've discussed in the past that we haven't covered today?
A. No.
Q. What kind of -- when we communicated by e-mail, if you could, please, describe how the e-mail system works with somebody in a correctional facility.
A. Well, we -- in order for us to contact somebody by e-mail, we have to put them -- we have to apply, you know, to the -- to the prison.
We have to register a person -- e-mail address and -- and who they are and their address and so on and what their relationship, you know, is.
At which point I would say, an attorney, which would cover -- could be anyone from my attorney, to another attorney and so on.
And you have to -- the person has to acknowledge that they want to receive the e-mail. And once they do that, then you're

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registered to receive and send e-mails to me.
Q. And is there a name for this system?
A. It's called the CorrLinks system.
Q. So is it an Internet-based system?
A. Yeah.
Q. So, in other words, you don't have an Outlook e-mail account in a computer?
You access the Internet and your e-mail through CorrLinks; correct?
A. Correct. I mean, we can't use the Internet, other than for internal prison matters and just to go in and out on an e-mail.
And all of the e-mails are reviewed by -- my e-mails, anyhow, are monitored by -- by the Bureau of Prisons.
Q. Have we offered to pay you any -- in any way to appear at this deposition?
A. No.
Q. Have we promised you anything of value?
A. No.
Q. Have you entered into any agreements with me or my firm or anyone in connection with this deposition?
A. No.
Q. You -- when we began this deposition, you

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swore to tell the truth; correct?
A. Correct.
Q. Why should we believe that you're telling the truth now?
A. Well, first of all, I have nothing to lose by telling the truth. And if, in fact, the bank or the fund acted improperly, then, you know, I feel it's my obligation basically to -- to say that.
It's not going to be my -- you know, I'm not going to be the one to determine that, obviously, but, you know, basically I've been willing to see anyone that's requested -- you know, whether they be a defendant's lawyer or a plaintiff's lawyer, I have been willing to see them.
So as to whether or not to believe me or not, you know, I -- I have no ax to grind, you know, one way or the other.
Q. When you say you have nothing --
A. Other than do the right thing. You know, I'm not sure what is the right thing any longer, but, to me, I'm -- my feeling is people are going to ask me questions.
I'm going to answer them, you know, to

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the best of my knowledge in a truthful manner, because it's -- I feel at this stage of the game it's -- it's what I want to do.
Q. Is there anything else that you would like to add?
A. No, not -- not really. Nothing that I can think of.
MR. BLEICHMAR: Let's go off the record.
(RECESS FROM 12:36 P.M. TO 12:44 P.M.)
MR. BLEICHMAR: Back on the record.
BY MR. BLEICHMAR:
Q. Mr. Madoff, we -- I just have a few more questions.
A. All right.
Q. Not a lot more.
We previously talked about your firm being technologically advanced; correct?
A. Uh-huh.
Q. When BMIS sent the trading records to Optimal, did it send them electronically or a paper copy?
A. Paper copy.
Q. And why didn't BMIS provide electronic trading records?
A. With the exception of -- of Citgo, who

was the custodian for Fairfield, we sent everybody just paper copies of the confirmations.
Primarily we didn't want to have -- we -- we were very concerned about anybody having a direct access to our computer system for -- you know, for -- I forgot what the term is, but we didn't want -- we didn't want people having access to our system.
So, other than our wholesale clients, who had order execution capability through our system, we didn't have any -- we didn't want anybody else to -- to have --
Q. Did Optimal ever --
A. -- access.
Q. Sorry. Are you finished?
A. No. That's it.
Q. Did Optimal ever raise -- or find it odd that you were providing paper copies when you were -- when BMIS was known as a technologically-advanced company?
A. Well, I would say that they all would have preferred to have that. First of all, it -- it was a cost issue for them. It saved errors on their part.

I mean, we -- we -- it was not uncommon for the people receiving -- it was -- it was a manually -- it was a -- it was a, you know, pretty intensive manual operation.
I mean, we would send the confirmations. We would actually fax them, because they didn't want to wait for the mail. So typically we would fax them con --
And the confirmations came out typically 24 hours after the trade was executed. And then it would be mailed. And -- you know, first class mail, and they would get it.
But most of the funds requested to have that information faxed to them that day. So they would get -- get it like within 48 hours.
And then their -- their -- their clerical people would have to type in, key punch in, to their systems.
So it -- in order to them -- to avoid having the key punch operators make mistakes, which they frequently did, it would have been -- it was an -- an easier process for them to -- to get it electronically.
Q. Did anyone at -- at BMIS on the investment advisory side use e-mail?

A. No.
Q. And did anybody at BMIS generally use e-mail?
A. Yeah. Everybody else in the firm used e-mail, other than the advisory side.
Q. And how did you -- why not?
A. Well, until I came to prison I was very opposed to e-mails in general. I just -- I never had an e-mail -- personally I never had an e-mail address.
There was also a -- an issue of the -- the industry was always afraid of e-mails, from day one. They fought having e-mail, because e-mails had to be retained.
And I remember sitting on a federal regulations committee meeting, when e-mail -- when the SEC was going to propose requiring of treating e-mails like they did all customer-related information.
I remember the then general counsel of Merrill Lynch saying this was going to be the downfall of the securities industry, because now all of this information, all of these communications, which typically in the past could be torn up, you know, are now going to be

saved.
And it -- they -- he turned out to be correct. It was the undoing of endless amount of -- so -- but that wasn't a concern so much for me.
It was just the whole general industry. Nobody wanted their phone calls recorded. Nobody wanted to have e-mails, you know, retained.
But most firms lost that ability. We were one of the few firms on Wall Street that were not required to record our trading room conversation.
That was because we were one of the few firms that was not involved in the price-fixing litigation in the industry, which required everybody to record their phone calls. So we never had any recording device at all in our -- in our office.
As far as e-mails are concerned, e-mails for all employees was a pain in the neck, because they spent all day, you know, on e-mails, on the Internet.
We were required -- as a broker-dealer you're required to monitor all of your firm's

e-mails all of the time, and it was very labor intensive.

And it had to be done by the compliance department. And, quite frankly, when we monitored our trading room e-mails, it was a total disaster. I mean --

Q. In what sense?

A. You can't imagine what -- what people -- you know, not only e-mail, what they do on the Internet. I mean, we had to require -- I mean, everything from these sex 800 e-mails. I mean --

Q. So it was a liability concern?

A. It wasn't a liability concern. We had -- my compliance officer, my brother's daughter, who was the -- who was with us, said, I'm not monitoring these e-mails, because, you know --

I mean, we -- we had -- we had people that were monitoring lesbians-of-size e-mails, you know. It was ridiculous. I mean, we had guys that were, you know -- that's what they do all day long. So --

And we said, you're not allowed to use e-mail for any personal -- we had -- my

secretary was shopping on e-mails all day long, you know, using the Internet, and --

Q. But you, personally, didn't have e-mail either; right?

A. I never had an e-mail. I saw -- I was a firm believer -- I returned every phone call anybody ever gave me within an hour after I got it, no matter where I was in the world, no matter who it was.

I was well known for that. I said, if you want to talk to me, call me up. But make sure it's important. And I'm going to return the call.

I found that it was common knowledge that -- because I know other people that had e-mails, like my sons and my brother, you know. People fire off e-mails, you know, blast e-mails off to -- you know, with jokes and everything.

That was the big thing with Wall Street, half of the e-mails going through were jokes that everybody would tell each other.

So there was nothing sinister in why we didn't want e-mails. I tried to stop it in the whole firm, but my traders, you know, felt they had to have instant messaging. They had to have

e-mails, because this was the way they functioned in general.

So we had very strict rules with it, but we allowed it.

But the people in the investment management side, they had no reason to have e-mails. I don't need to have your wife tell you to bring home a quart of milk over the e-mail.

Q. Let me switch topics for -- for a moment and go back to Manuel Echeverria. Over the years Mr. Echeverria was involved in conducting some due diligence over you; correct?

A. Uh-huh.

Q. And what was your impression of his ability to conduct due diligence?

A. You know --

MR. REGAN: Objection.

You can answer.

THE WITNESS: He -- he was typical of -- you know, he -- he sort of knew the questions to ask, which was -- they all knew.

Most of them, quite frankly -- frankly, had questionnaires that their due diligence people would -- would provide them with to ask.

And he understood the strategy. So he was as knowledgeable as anybody else with, you know, the questions he asked and the due diligence he did.

BY MR. BLEICHMAR:

Q. Was it your impression that he asked enough questions?

A. Yeah.

Q. Did you feel that he was pushy?

A. No. He was -- he was considerate. In other words, I didn't have to tell him more than twice, or three times at the most, you know, that I would provide or would not provide what it was.

But it was pretty well laid out from the first meeting what information I would provide and what I wouldn't provide.

MR. BLEICHMAR: I'll reserve the rest of my time for redirect.

(DISCUSSION HELD OFF THE RECORD.)

MR. REGAN: Mr. Madoff, thank you for your time. We -- as you and I discussed briefly earlier, the judge in this case has entered an order that gives each side a day of up to seven hours to depose you. We're going to reserve our

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opportunity to do that. I'm not certain that we will --

THE WITNESS: Uh-huh.

MR. REGAN: -- find it necessary, but if we do, we will certainly let you know through the Bureau of Prisons.

THE WITNESS: Right. Okay.

MR. REGAN: Other than that, again, just thank you for your time, and we will --

THE WITNESS: You're welcome.

MR. BLEICHMAR: We can go off the record.

(SIGNATURE RESERVED.)

(DEPOSITION CONCLUDED AT 12:55 P.M.)

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ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

____

BERNARD L. MADOFF

SUBSCRIBED AND SWORN before and to me this ____ day of ________________, 20___.

____

NOTARY PUBLIC

My Commission expires:

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E R R A T A S H E E T

IN RE: OPTIMAL U.S. LITIGATION

DATE: AUGUST 7, 2012

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(DATE) BERNARD L. MADOFF

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E R R A T A S H E E T C O N T I N U E D

IN RE: OPTIMAL U.S. LITIGATION

DATE: AUGUST 7, 2012

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(DATE) BERNARD L. MADOFF

STATE OF NORTH CAROLINA
COUNTY OF PERSON

CERTIFICATE OF TRANSCRIPT

I, Lisa A. DeGroat, a Court Reporter and Notary Public in and for the aforesaid county and state, do hereby certify that the foregoing deposition of BERNARD L. MADOFF, was taken by me and reduced to typewriting under my direction; and the transcript is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by any attorney or counsel employed by the parties hereto or financially interested in the action.

This the 9th day of August, 2012.

____
LISA A. DeGROAT
Registered Professional Reporter
Notary Public #19952760001
Expiration Date: December 8, 2015

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